TRIAL OF

REV. GEORGE MARSHALL,

Pastor of Bethel Presbyterian Congregation,

CHARGED WITH

FORNICATION AND BASTARDY

WITH MISS ELEANOR JANE M'FADDEN

WITH THE SPEECHES OF COUNSEL AND CHARGE OF THE COURT,

AS REPORTED FOR THE PITTSBURGH SPIRIT OF THE AGE.

WITH AN ADDENDA:

CONTAINING MUCH MATTER NOT HERETOFORE PUBLISHED.

PITTSBURGH:

FOSTER, M'MILLIN & GAMBLE,

NO. 53, THIRD STREET.

1843.

TESTIMONY.

Court of Quarter Sessions of Allegheny Co., Hon. B. Patton, John M. Snowden and Wm. Porter, on the bench; Wednesday, Oct. 25.—The case of Rev. George Marshall, accused of criminal intercourse with Eleanor Jane M'Fadden, being called, Mr. Moorhead, (the Prosecuting Attorney,) and Mr. M'Candless appeared as counsel for the prosecution, and Messrs. Lowrie, Loomis and C. B. M. Smith for the defence. The plea of "not guilty" having been entered the trial proceeded.

The following jury was sworn, viz: Robt. L. Melville, Robt. Beatty, Lewis Davis, Joseph Richardson, Joseph Westerman, Joseph Walker, Jr., Hugh Brown, Thomas Mitchell, James Rulong, James H. M'Clelland, Walter Wall, Joseph Briggs.

Mr. M'Candless opened the case for the prosecution, requesting the jury to divest themselves of any prejudice which might have been produced by out of door rumors, giving a sketch of the case which the prosecution expected to prove.

The Court then adjourned until two o'clock.

Testimony of Miss Eleanor Jane McFadden.

Miss Eleanor Jane McFadden, *sworn.*—George Marshall was the father of my child, it is a male child: it was begotten at his house in St. Clair township, and born at my uncle David Lyons'; the first connection between us took place in July of last year; he had connection with me several times,—down to February last; the first connection took place at night between nine and ten o'clock, after his family had retired; was sleeping in the room above the kitchen; he came out of his own room, his study: the two rooms, are connected with a door; witness had retired to bed. [Mr. Lowrie objected to the facts being elicited by questioning: he desired her statement first—she could then be questioned.

Mr. McCandless stated that the native modesty of a female would prevent the eliciting of such disgusting details, in any other way.]

Witness proceeded.—He came to my bed and state his desire; requested it might not be so but he insist ed; he then accomplished his purpose. He said h thought it was a great sin, after it was over, and wish ed that she would forgive him for it; he said Davi had sinned the same way too; recollect nothing else My child was born on the 23d day of August, at un cle David Lyons', in St. Clair township, she thinks Before the first connection had no conversation wit defendant on the subject; had afterwards—about th same as we had before; said he was sorry for havin done so; he gave me no book to read, turned my a tention to no chapter in the bible, in particular, onl that of David; said David had sinned in the same wa that he had.

Cross examined.—Cannot say how many times w had connection after the first time in July; he ha never said nor intimated anything of the matter be fore that night in July: he expressed his desire by sim ply saying "he wished to go to bed with me;" tol him I thought it was a great sin; he insisted upon i by saying "we would get forgiveness if we woul seek for it;" had been in bed a good while, but ha not got asleep; his own little girl was sleeping wit me that night; he was not undressed when he cam to my bedside; his daughter was better than two— perhaps three—not certain how old—perhaps thre years; her name was Hanna Margaret; my candl was not burning, and he brought none with him; h was not long with me—not a quarter of an hour; h came to see me the next week a second time, an said about the same as the first time—said "he wa sorry for it and done wrong" a second time, but sai nothing about David's sin that time; the second wa at about the same hour of the night as the first visi witness resisted; the girl was with her on the secon visit, and on every night such an occurrence too place; between the first and second visit he converse with her several times, still lamenting that he did so

had connexion as often as once a week after that, r a good while—up to February; there were times uring those months when it was inconvenient for itness to have connection with defendant; a week ould frequently pass without connexion. Witess knew when the child was begotten, and the inrcourse was continued after she knew it was beotten—not after she knew for certain; he expresd his regret after this had happened. Our interourse after the first two times, occurred always at ght, usually at different times—sometimes at later ours of the night; he never got up from his bed to ome to her; it always took place after the rest of e family had gone to bed. No one else ever had onnection with her. Lived a year in his family bere the first criminal intercourse, and left on the first ay of August this year; was a member of his church bout a week before she came to his family; left the mily because she thought it was best to go to her other's house—she chose to leave. Mrs. Marshall d not "turn her away," nor did witness leave in a ery ill humor at Mrs. Marshall, nor make use of any reats in leaving. The child was begotten in the rst part of December—cannot fix the date any nearer, eans the first half of the month—nearest she can come; new it was begotten then by counting backwards. First connexion took place about the middle of ly—rather before the middle—feels pretty confiht it was between the first and middle of July, been nine and ten o'clock; Mrs. Marshall and the endant's five children were at home; Mrs. Marall retired to bed not very long before witness ent up stairs; she slept down stairs; defendant, his ife and children attended worship with witness at evening; his wife retired some time after. Dendant was not in my room a quarter of an hour—pects he was about ten minutes; he came from the udy, adjoining my room, with his clothes on; he ever intimated any thing of the kind to me before. ever had intercourse with her more than twice a eek, sometimes oftener than once, until February, Mrs. Marshall being at home during that time,) hen it ceased on her discovering her being in that ay; he still desired it, and sometimes came to her ed, but she refused, but assigned no reason in parcular; he did not come after that—two or three mes; told him the way she was; assigned that as a eason for refusing further connexion. He always ld me during the intervals that he was sorry, but ame back. Witness was twenty-one years of age n the 10th of September—last month. Family orship was mostly between seven and eight o'clock; mily retired sometimes sooner and sometimes later. Refused him previous to February, but he insisted and prevailed; she felt very reluctant to gratify him; complaint was made before 'Squire John M'Cully, at uncle David Lyons', when severals were present—Mr. Titball, her mother, Aunt Lyons, David Lyons and Samuel Lyons; Mr. Marshall was there part of the time, and left the room before it was done. 'Squire M'Cully turned out the men, before the examination was complete, but after defendant had left. Did not tell the 'Squire how often we had intercourse—he did not ask; 'Squire M'Cully asked when and where it was begotten, and she told him about the first part of December, at Mr. Marshall's, and (in reply to the 'Squire's question,) after the family had retired to bed; defendant was not present at this time, nor were the other gentlemen; no question was put in defendant's presence, or the other gentlemen's; the 'Squire swore her and then invited the men to leave the room, if they pleased—not the women. He referred to the bible, about David, between first and second connexion—no particular chapter; all he said was that David had sinned in the same way; referred to this only between the first and second connexion. The 'Squire came to get her to sign the oath, and at her request he gave her a copy of it, two or three weeks or so ago, and she gave it to Mr. M'Candless; resided about three or four miles from the residence of the 'Squire.

By Mr. McCandless.—The oath was next day after the birth of the child, when she was unable to sign it; she never went for a copy, nor did he ever refuse giving her one. Told Marshall on one Saturday evening, in June, she would not go to meeting next day—communion Sunday; he said she had as good a right to go as him, as he was as great a sinner as she was, or if any thing, greater; she went to meeting.

By the Court.—Was admitted to the Church, after examination by Mr. Marshall.

Dr. Jos. Curry, *sworn.*—[Mr. Lowrie wished to know what prosecution wished to prove by this witness. Mr. M'Candless replied, citing the Act of Assembly of 1705. Mr. Lowrie objected, stating that the Act referred to was in the disjunctive; the condition of the law previous to that time must be considered, and contended that such evidence was only admissable in case of the death of the female—her last declarations *in extremis.* Mr. M'Candless thought the Legislature wished this declaration made in all cases; in a case where the professional attendant states to her the probability of her death, the

statement of the female during labor is the strongest evidence which can be procured. Mr. Loomis also objected to the reception of testimony of prosecutor's declarations, when in labor, as corroborative evidence of her statements in Court. The Court thought the Act already extended the rules of evidence to a great degree, and postponed a decision (in the absence of all precedent,) until the case had been examined,—and

The Court adjourned till to-morrow morning at eight o'clock.

SECOND DAY.

Court of Quarter Sessions of Allegheny Co. Thursday, 8 o'clock, A. M.—The court met pursuant to adjournment, (present—a full bench) but was delayed for a few minutes by the absence of a juror.

Mr. Lowrie again addressed the court relative to the admission of declarations *in extremis* or *in articulo mortis*, contending that at common law such declarations were inadmissible in case the person making them survived, and that the phraseology of the Act of Assembly, which is in the disjunctive, clearly evinces such to have been the intention of the Legislature, when the common law rule of evidence was thus extended by the statute. Defendant might use such evidence to invalidate prosecutor's testimony, but it was a farce to bring forward in corroboration of evidence delivered in open court, under the solemn sanction of an oath. He denied that the law extended to the admission of such declarations, in case of the death of the female, unless an oath had been previously made before the magistrate, according to law.

Mr. Moorhead thought the admission of this testimony did not require a construction of the statute; under the general rule of law, evidence can be produced of the witness having used the same story on previous occasions—or a different one, to invalidate or corroborate her testimony. He referred to 1st *Chitty's Crim. Law*, 569—Lord George Gordon's case; 12th *Wendell;* 1st *Modern Reports*, 283, the Maynard trespass case.

Mr. M'Candless thought the plain language of the act proved the contemplation of the act to be the making her persistance in the "charge," in her labor, in every case evidence; he did not consider the word "charge" to mean one made under oath.

Mr. Loomis mentioned that there was no decision reported, binding upon this court, relative to the construction of this act; no *practice*, where objection was not made, should influence the decision of the court. The same rule did not apply to the corroboration, as to the contradiction of a witness' testimony—the principle was entirely different. He considered the offer of this testimony as an imputation by the prosecution upon the credit of their own witness.

Judge Patton delivered the opinion of the Court—decided that the common law rule would not admit such evidence—the declaration of Miss M'Fadden, when in labor, and when she considered her life in great danger, relative to the father of the child under the act of assembly evidence of the kind was admissible in all cases—whether she charged the defendant or another.

Judge Porter dissented from this opinion.

Mr. Lowrie read from *Greenleaf on Evidence*, 18[illegible] to show that the witness must have believed herself to be in imminent danger. The court assented to the view of the case.

Testimony of Dr. Joseph Curry.

Witness was called in as a physician, found Miss M'Fadden in labor, though not very ill at the time he was called in; as the labor progressed she became worse; about an hour before delivery she was pretty bad—pretty ill; she was very bad at the time; thought that a proper time to ask her who was the father of her child? She said "Mr. Marshall;" pretty soon after, whilst she was still in labor, told her she "might die—would'nt it be a dreadful thing for you to die and to go before your Maker with a lie!" She replied again "it was Mr. Marshall." After she was put to bed, asked her a third time; "after suffering so much could I tell a lie"—she replied, "it is Mr. Marshall's!" Witness said no more to her. Was requested to attend her by Mr. Lyons, who wished not ask her who the father was; the reason he assigned for that was that he wanted to know the truth. He nothing further to say.

Dr. Curry was not cross examined.

Testimony of John M'Cully, Justice of the Peace.

[Mr. McCandless wished to prove by this witness that the 'Squire refused a copy of her oath to both parties, until lately, also the circumstances of her signing the oath,]

Witness took Prosecutrix's information in this case; the oath was not signed, as far as regards myself, on account of my actually forgetting to take her signature to it before leaving the house, on account of conversation between defendant and prosecutrix. Did not decline giving either party a copy of the oath—*did* decline giving either party a copy of the oath except upon a certain condition, which was that it should be kept from the public, until the Court was in session; gave that reason to Mr. Marshall in writing, in reply to a request he made for a copy in writing; sent it to him, and he acknowledged, verbally

, having received it; gave the same reason to Mr. 'ons; kept no copy of his note to defendant. He 'erwards called on witness for a copy, I presume, 'understood so from the drift of his conversation; 'obably made a demand for it, if so, it has escaped 'itness' memory. Gave a copy to Miss McFadden, *thinks* two weeks ago to-morrow, at David Lyons' 'use, at which time (same day,) asked her to sign 'b information. Had offered Mr. Marshall a copy the same ground he gave her one,—on a pledge 'her word not to give it to the public. After my 'st refusal to give a copy and before giving her one, 'd taken legal advice on the subject but not from 'y gentleman engaged in this cause.

By the Court.—Got her signature to the original 'ormation, and not to a copy of it.

Cross examined.—Asked no fee from her; she ten-'red none. Mr. Marshall never tendered the fees 'person, but did when he asked a transcript of the 'cket, presumed from his conversation he meant to 'lude a copy of the oath—this was the second de-'nd; he called but once when witness was at home, 't had called in his absence day before, and said he 'uld be back next day; have not his note here—'m it he seemed to be under the impression the 'py of the transcript would include the oath; in his 'st note he asked for a copy of the oath, and in the 'ond he said, "he renewed his former request."—'e principal part of her examination was not in 'vate; did not consider he examined her on the 'in point in private at all—did on others; consider-'no part of the examination in private; Mr. Mar-'all had retired, and witness requested the male part 'the audience to retire, before he put certain ques-'ns; this was not for the purpose of excluding the 'endant—didn't know whether he had gone from 'n house or not. Was elected a magistrate in March '40. No one ever asked a copy of an oath made be-'e him, before. Presumes he put down all her an-'ers in the oath. During the latter part of the ex-'ination Mrs. Lyons and, he thinks, three other fe-'les were present; except Mrs. Lyons does not 'ow any of them; if he ever saw her mother before 'did not know her.

'Mr. M'Candless wished to inquire what the con-'sation was between the prosecutor and defend-', which the court refused.

'*Witness continued*—The examination was on the 'h of August.

Testimony of E. Larimer.

'E. Larimer, *sworn.*—Was not present at her ex-'ination before the 'Squire—heard a conversation 'ween prosecutor and defendant; as soon as defendant had come home from over the mountains, witness happened in Mr. Lyons' and found him there—couldn't pretend to word the discourse as it was there, between witness and defendant; he said what a dreadful thing it was for her to charge a minister of Jesus Christ with such a crime as that, that "she was an heir of hell," and "an imp of the devil," a "serpent that he had nourished in his own family to sting;" she wasn't present at that time.

Mr. M'Candless—That's all.

Mr. Lowrie was astonished at the gentleman bringing in such evidence.

Mr. M'Candless would proceed, and then reply to the frank and candid remarks of the learned gentleman. The witness then proceeded.

After this Mr. Marshall asked if she could be seen; Mr. Lyons said she could, went out and fetched her into the room; can't tell Mr. Marshall's first words as witness felt a little confused; after some conversation he used the same expressions to her face; a good deal of conversation took place between them.

Cross examined.—She never told me the manner of his first visit to her bed; of course witness could not tell any one so—not that he recollects of.

[Mr. M'Candless said Miss M'Fadden wished to explain a portion of her testimony; if desired he would prove that this had not been suggested to her by any one. He offered Mr. Lyons as evidence of this but

Mr. Lowrie objected. The prosecution appeared to be suspecting their witness all through.

Mr. M'Candless.—Oh, no, sir!]

Testimony of Miss McFadden, continued.

She neglected in her testimony to mention that sometimes Mr. Marshall was away better than a week, during which times she had of course no intercourse with him.

Cross examined.—From July till February Mrs. Marshall in her usual good health.

By Mr. M'Candless.—She had her last child last of June or first of July a year—not certain which.

By Mr. Lowrie.—She was not living there at that time; had been before but had gone home—returned afterwards.

Here the testimony for the Prosecution closed, and

Mr. Lowrie opened the case for the Defence, speaking of the peculiar position of the defendant—a married man and a minister of the gospel, who had been in charge of the Bethel congregation for some ten or twelve years, bearing the character of an honest and amiable man—and one who stood

among the highest amongst his fellow laborers in the pulpit, bearing an unsullied reputation. He believed that such a charge against no clergyman heretofore accused could have produced so great a sensation in a community. He alluded to the reversal of almost every rule of the criminal law, and to the absolute impossibility of proving the innocence of one accused of this crime, in any case where the accuser has taken care not to accuse one who can prove his *absence* from the place where the crime is alleged to have taken place, during *the whole time* of the alleged intercourse. Mr. L. then commented upon the evidence for the prosecution, and stated that if they should succeed in establishing that any one of the material allegations of Miss M'Fadden was untrue, no confidence could be placed in any part of it. He then proceeded to state the case they expected to prove, and when he had concluded the defence called Mr. Thos. Kiddoo.

Testimony of Thomas Kiddoo.

THOMAS KIDDOO, *sworn*.—Is an elder of the congregation of which Mr. Marshall was formerly pastor; previous to the birth of her child, had an interview with prosecutor; on the 24th of August there was to be a meeting of the congregation to recall Mr. Marshall to be the pastor of the congregation; the rumor got abroad relative to this matter about a week before—the Saturday preceeding the day on which the meeting was to be held; had heard of it, spoke of the matter to the elders, and requested the person who preached on that Sunday to call a meeting of the session and the deacons, at the interval; at the meeting witness spoke of the rumor affecting the moral character of Mr. Marshall very seriously; the meeting appointed a committee to wait on this girl to ascertain something of the certainty of this matter; Mr. Donaldson and witness were that committee; they proceeded on the next morning to the house where the lady was, at her uncle David Lyons'; when we entered the house she was not present in the room we we were taken into; enquired of the lady for her, Mrs. L. said she had been there a few minutes before but she could not say where she was then; told our business and were anxious to see her; considered it important to know something about this matter; Mrs. L. stated she had no objections, but asked if it wouldn't be well for prosecutor's mother to be present? we had no objection, probably it would—we didn't care who was present; the prosecutor's sister went to her grandfather's (a short distance) for her mother and she came, we told her our object in coming—to see the girl: she stated it was not necessary for us to see her, she could relate all her daughter had to say; witness said that would not satisfy them, the had *rumor* enough—they wished to see the girl and have it from her own mouth; she sat a considerable time not giving us any satisfaction, whether we could see her or not; Mr. D. went out with Mrs. L. (her sister) some fifteen minutes; during this time Mrs. McFadden moved her chair beside witness, and proceeded to give him a history of this matter—as she said the girl had stated it to her.

[Mr. M'CANDLESS objected to evidence of the mother's statements. The witness then continued.]

—At length the mother went to the room and brought her out. After referring to her situation told her they had come to ascertain some facts concerning it, as there were several rumors about; one that the people should have said that John Wilson was to be the father of the child, another that she should have said that Mr. Marshall was, and they wanted the truth; she said that Mr. Marshall was the father of the child she was then pregnant with; witness asked her under what circumstances such an awful thing as that could have taken place between her and Mr. Marshall, and whether it took place at his house or where? She remained mute—making no reply. Her mother said "Jane, can't you tell these men the same story you told your uncle and me?" the mother commenced a statement; witness interfered and said he hoped her daughter would tell her own story. The mother continued, stating that it took place at home—at defendant's—at a late hour of the night—that he had come to her bed, and wished to lie with her, (or something to that import,) that his own little daughter was in bed with her, that she threatened to halloo—to alarm the house—if he did not desist, but that he finally prevailed and effected his purpose. This statement was given by the mother. Witness asked the daughter if this was the fact, she said it was; then asked her what time this should have taken place? she said it was just about the time he entered on his agency; how many times Mr. M. should have had connexion wish her? she appeared to hesitate; the mother attempted to speak but witness checked her: the girl then stated but once; the mother replied "*twice*, Jane!" then the girl said "yes, twice;" had he ever intimated, previous to this time, that he wished to have connexion with her? she said he had not. Witness said "Jane, do I understand you to say that Mr. Marshall never did, directly nor indirectly, make such a proposition to you, up to the time he came to your bed?" She said he never did, nor she never thought of such a thing—thinks she repeated this, and added that he never had before nor after these two times she acknowledged

o; think she urged to give some day or month, but she did not; thinks he commence operating for the Board of Missions in the latter part of November, when he visited one or two congregations, but did not enter fully on his agency until the first of December.

By the Court.—Asked her if both connexions were in the same night; she made no reply and gave me little or no satisfaction as to what occured between them; was it the second or the next night? she made no reply; was he absent from home in the interval? no.

By the Defence.—Judge the little daughter of Mr. Marshall spoken of to be between four and five years of age now. Defendant has been pastor of that congregation in the neighborhood of eleven years; have been intimate with him; never heard anything imputed against him up to that time, have been in his company much, sometimes at a distance from home, and always considered him an upright, uniform man; never saw anything like improper conduct in him as regards females; always considered him very reserved in their company; he has been intimate with my family and I have visited him; he has a wife and five children who appeared to live happily with him; have seen his wife treat him kindly when he was sick and always heard him speak respectfully of her.

By Mr. M'Candless.—First heard report a week before the meeting, and a week after it had been given out; her pregnancy had become notorious—months before, spoke to him about it before he went East, but understood she had denied her pregnancy ill an after then; her living with him, and his going away made me feel concerned and speak to him; he told me on the 4th of July her mother had come and sai the girl utterly denied it, she wished her examin by defendant and wife, which they did. He sa he could hardly believe the report—her characte was upright, he said; witness told him he thought there was something wrong—was doubtful, hoped it was not true; told him the reasons he spoke of it—she was a member of the church, and he thought the father would be induced to marry her, supposing it some young man; he said he would speak to her more plainly that evening. Saw him next day in the city, on his way East, he said he had re-examined her on that subject, she still denied it, wept bitterly, and appeared very much distressed that the people should say so of her; he said if she was, she had wilfully falsified, as she had appealed to heaven to witness the truth of what she said. The child was not the eldest; believes the eldest is twelve or thirteen.

By the Defence.—John Wilson left this country some time before Mr. Marshall's last return from the East—in June he thinks. He lay sick (not confined to his room,) at Mr. Marshall's during his absence the first time, thinks in the early part of May last; Mrs. Marshall was then absent; this girl, Mrs. Couch, (an elderly lady,) and a German hired man, were there at the time; Wilson boarded there; he had been at Canonsburg until he took sick, and had taught school out there the fall before—up till November last; left in June for East of the Mountains and has not returned.

By the Prosecution.—Wilson was no relative of Mr. Marshall, was not studying divinity; was sickly when he came to Mr. Marshall's, but attended church; when teaching thinks he boarded with the scholars' parents; the school was three miles from Mr. Marshalls. Never saw any impropriety in the girl's conduct; Wilson was a communicant, know nothing against his standing in the church. His health and spirits were good when teaching; he attributed his sickness to a ride in the winter.

Mr. Loomis.—Did not public rumor fix on Wilson the parentage of this child?

Mr. McCandless objected to this, as his question was merely as regarded Wilson's standing *as a member of the church* of which witness was an elder.

Testimony of William Donaldson.

William Donaldson, *sworn.*—Was one of the committee with Mr. Kiddoo. His statement of our interview at Lyons' was substantially correct; recollects nothing further of the matter, except his conversation with Mrs. Mary Lyons, in the kitchen, relative to obtaining an interview with the girl. Have known defendant intimately since he has been pastor, and has collected part of the stipends for him for six or seven years; never heard anything intimated against him only this matter, never saw anything in his conduct in compatible with the stricted morality of the clerical character. Wilson was there some time; didn't know where he boarded before he came to Mr. Marshall's.

Cross examined.—Prosecutor was a member of Bethel church; know nothing against her. She intimated at the interview, that the connexion was once; her mother said twice, and she assented and said it was so.

By Mr. Lowrie—Never heard anything abou Miss McFadden's character.

Testimony of Mrs. Catharine Couch.

Mrs. Catharine Couch, *sworn.*—Lived at Mr. Marshall's six weeks, went there last May; he was over the mountains with his wife. Jane McFadden kept house, witness was there for company with her; John Wilson and the hired man were there also

Don't recollect that Jane and her slept together but one night. as she said witness must sleep in Mr. Marshall's room, with his two little sons who were there; she gave no other reason, but said that after a while she would move the boys' bed up stairs, when witness could sleep with her. Wilson slept in one of the bed-rooms, in front, up stairs, and occupied Mr. Marshall's study in day-time—she said; she said he had tumbled up the bed in the study-room in day-time, but slept in the other room at night; the study was next prosecutor's room, and a door between them. When she moved the children's bed up into her own room, she prevailed upon witness to go into her room, and they slept together one night, after which she would come up after witness had, and sleep in another bed in the same room; don't recollect whether Wilson was at home that night; first night witness was there another young woman was there and slept with prosecutor, next night wanted the latter to come and sleep with witness for company, but she said she would sleep only in her own bed; Wilson was there during Mr. Marshall's absence, except when at Cannonsburgh a day or two—at another time he was away at Mr. Morgan's a couple of days, never saw anything remarkable about their intercourse, except she said the hired man was angry at Wilson being there, asked her why, and she said because he thought Wilson thought too much of her; she was frequently talking about Mr. Wilson.

[Mr. Lowrie.—Did you ever see her go into his room?

Mr. McCandless objected to such leading interrogatories.

The Court put the question and the witness continued.]

—Do not know whether he ever went into her room or she into his; she was often up stairs, and away from me. [Making the beds, remarked the counsel.] It took her some time, then. On week nights she always sat up later than witness, with but one exception. Can't say as to Wilson, frequently heard both talking down stairs, after witness was in bed. Witness left the house on the next Monday after Mr. Marshall returned.

Cross examined.—Left Wilson there—she didn't conduct herself as a girl ought to have done, when she was attacked about any thing she would deny it and have seen her whip the boys when witness thought she ought not—knows she was a woman who didn't abide by the truth, because once she plucked a fowl for dinner, and says she, "Billy shan't have any of this"—that was the hired man; we ate the fowl, gave him none, and when he accused her of it she denied that any fowl had been cooked. [Wi ness gave a similar relation about a *pie*, but spoke low the reporter got her testimony completely in *pi* ere she got through; she continued]—Accordin to my judgment she wasn't a girl of truth.

Testimony of Miss Jane Lee.

Miss Jane Lee, *sworn*,—Was at Mr. Marshall when Jane M'Fadden left: she was turned away Mrs. Marshall; it appeared that they had fallen o about the report about Jane being in the family wa was in another room, and did not hear it all, but mig have had she tried, didn't hear Jane deny it, but bla ed Mrs. Marshall as being one among the first th was trying to hurt her character about such thing this was in the evening, and she remained that nigh next morning she didn't speak to either of us, a started away near noon; any questions by Mr. Marshall she would just answer without saying muc After saying Mrs. M. had tried to injure her chara ter, she said she would rue what she had said abo her. Witness is a sister of Mrs. Marshall.

Cross examined.—This was on the evening pr vious to her leaving; am certain she used that wo —the door between the rooms was a part of t way open—not all the way open at any time. A certain of the word; they were talking, very lou Mrs. Marshall said she shouldn't stay another d about the house, she had no confidence her, a that she found she wouldn't tell the truth; said not ing of Mrs. Couch; no more unkind words we used next day. They parted on reasonably goo terms, but Mrs. Marshall didn't allow to have h there any more. Jane expressed no intention to g away the day before, previous to this conversatio

By the Defence.—The expression used by her si ter, about her not being a girl of "truth," was in r lation to her denial of pregnancy and her havin told her she had not altered a dress which she had.

The Court adjourned for one hour.

Testimony of Miss Lee---Continued.

By the Defence.—The dress witness referred t was altered, by being made longer and wider, to su prosecutrix's enlarged person, all of which she d nied; she had got some of her Mistress' silk whic she denied; when compared it proved to be Mr Marshall's silk. Didn't hear her deny taking it.

Testimony of James Williams.

James Williams, *Sworn*.—Was acquainted wit John Wilson; became acquainted with him at Ca onsburgh, as a student of Jefferson College, it mus have been about a year since, as near as he coul recollect; roomed in same house, boarded in sam

ɔiss, and recited with him; was intimate; vacation here this time last year: he first came there at the st of the session, about this time last year, when tness became acquainted with him,—first Monday November. He came there from Mr. Marshall's am not certain—understood so; we were at Colge during the principal part of last winter; he did t commence at the commencement of the session st winter, as he was then teaching; am not certain ether that was the first time witness was acquaint- with Wilson. Saw Wilson and prosecutrix in nversation together near defendant's house; it was e Sunday, when he saw them in close conversaon, while going to the church: this was about the 9th y of April; he appeared to affirm and she to deny mething; saw her shake her head, and heard her say o," twice; they were in very earnest conversation. nce called to see Wilson, at defendant's, in the onth of June, during defendant's absence over the ountains; knocked at the door of his study, did not ceive an answer, and knocked again; however, after st knock, heard a noise like the removing of chairs something of that kind. At second knock he id come in, did so, and on entering heard the door the opposite side close very quickly, with considable noise, Went in; when first saw him he was ar the centre table apparently as if coming towards e door as witness entered; spoke to him; he apeared very much confused—showed me to a chair.

Mr. Lowrie.—What did he say?

Mr. M'Candless objected, stating that Wilson ould have been procured, or the failure of efforts proeure him explained. He stated that he had pposed the witness was to prove some conversaon with the prosecutor.

The Court sustained the objection as regards e admissibility of any declarations of Wilson, not ade in her presence.

Mr. Lowrie contended that the evidence of his nmediate declaration "that Jane had been fixing the ings in the room" *was* a portion of the *res gestæ*. If we are stopped in this manner, we shall eerinly be amazed at the judgement of the Court.

The Court.—Then, Mr. Lowrie, you will be mazed. The Court is firmly convinced that this roposition to admit the declarations of third parties ot under oath is a novel one. The objection is susined.

Witness continued.—When the witness entered, e bed looked as if it had been laid on—it looked *at*, (laughter.)

Mr. M'Candless objected to any of these details.

Mr. Lowrie.—We'll stop there.

Mr. M'Candless.—Better do it in a better humor.

Mr. Lowrie.—I have manifested no ill humor *towards you*, sir!

Witness continued.—Never saw prosecutor and Wilson together, except at church.

Cross examined.—Have conversed with her and used the usual conversational gestures.

Testimony of Wm. Aggers.

Wm. Aggers, *sworn.*—Lived with Mr. Marshall two years, went away two years, came back and lived two years longer; when he came back prosecutor was there; knew Wilson; first saw him at defendant's about three—might be two years ago; he was his hired man before witness came back the second time, when he went to Cannonsburgh, after which he was often at defendant's. In October last suppose he was teaching school—in the country somewhere; heard so from the people. He was at Mr. Marshall's often last fall, staying over night. When Mr. M. was agent he was there once to talk about the agency—suppose he was teaching at that time—he was at defendant's often then. When defendant went to Lebanon, Wilson went away that morning (Monday)—he came on the Saturday previous; believe this was in December, or about the time the agency commenced. He was a heap of times there—came generally on Saturday and went away on Monday. Was there in January one time, with a student from Cannonsburgh named Johnson; that night about three or four o'clock in the morning, (Monday) witness saw a man coming out of the kitchen; that's all. Saw Wilson and Jane in company at different times there; together often times, before and after; saw her one time come out of his room—the study—a little after he came down; witness went and found the bed all out of order; this was on the sabbath day; her clothes were "skrinkled;" [Translated by Mr. Lowrie "wrinkled"—laughter—"silence" said the court crier,] never saw any thing of the kind at any other time—either leaving the other's room. Family worship between quarter before or a quarter after nine. [Mr. Lowrie—Had you any objection to their being intimate? Witness grinned broadly and answered] No; never told Jane so.

Cross examined.—Wilson came with Mr. Johnson about the first of January; defendant was away, can't mind when he went away, don't know where he was. Heard the kitchen door going, and then got up; just awaked then out of my sleep; when witness came out of his room the man went into his room. Saw him go in his room—the study room which was kept for the students; witness left his clothes in the kitchen except his pantaloons; the man came up stairs, out of

the kitchen—don't know who it was. The stairs lead from the kitchen to the kitchen loft, where Jane slept, through that to the students' room; she slept above the kitchen; saw the man on the porch, out of his window; when he got up and went out of his room the man went in his room—he was dressed but had no hat on; can't tell whether it was Wilson or Johnson or either of them. He was walking on the porch when witness saw him; it was about the first of the month, between the fifteenth and the first; it was middling light—star or moonlight; saw him plainly; don't know when defendant came home—he was away so often—within a month; didn't tell him of it then; told him when this report came out. Defendant asked him whether he knew anything wrong about the girl; told him he saw a man come out of the kitchen; defendant did *not* ask him—he didn't "furstood" Mr. McCandless' question right a few minutes ago. Told a man who was making fence first about it. Don't know when he told Mr. Marshall of it. Wilson generally started for Canonsburgh on Monday mornings, pretty early—never until after breakfast, started after breakfast that morning. Never spoke to Wilson about it. The time he saw them come out of the study, &c., was when defendant and his wife were over the mountains; it was on Sabbath; is was at milking time of day—she went right out and milked. Wilson was not in good health, but went to meeting with her. Was at the church—don't mind who preached; it was at Mr. Marshall's Church; she came down about ten minutes before him; she came down in the kitchen—he came down the other way; was in the kitchen when she came down; was in the kitchen when he came down; kitchen door was open; he might have come out of the cellar; he *might* have come out of a room opening on the entry, *but he wasn't in there.* (Laughter.) Saw him come from the entry. Went up as soon as he come down. Know he *was* up stairs—saw him and her up stairs—and he could not come down any other way. When he was feeding the horses he saw him and her together in the study-room; the window was up, and they were close to it; don't know what they were doing—she passed the window—he was sitting on a chair. It is a two story house; don't know the size of the window; was twenty rods off when he saw them; the rolling curtains to the window were up. He was coming towards the house, opened the gate, saw them come into the kitchen, and she came down stairs. Don't know that they were in the habit of taking a nap after church—some times the preachers came down. Jane and witness never had a fight—was not good with her—neither good nor bad with her; th never had any bad words together; never told M Kee they had a quarrel—told McKee he didn't l her; never told him defendant went to bed with i housekeeper. Went up to see whether Jane l laid in the bed; didn't look at her bed—looked at l can't tell whether she was in her bed; there was in bed two places—looked as if there was two in; wa up through the entry to the student's room, not throu the girl's room; then went to his own room awh and came down the same way he went up. Wils talked with defendant about the agency after it co menced; was on the porch, and heard them.

By the Defence.—The stable is further off than gate; about twenty *steps*. When defendant's wife w last confined a little girl, aged about 16 years, fr Pittsburgh, was there; staid about three months af the confinement and after Jane came back, wh they slept in the same room together; don't kn whether in same bed. Margaret Latham was l name: [counsel gave 24th June as the date of confinement.] thinks she came before the confi ment—perhaps shortly afterwards. Think she ca before Jane got sick.

Cross examined.—She staid a good while af Jane came back; she was not got to fill Jane's pla they had another girl then to do Jane's work.

Court adjourned till eight o'clock to-morr morning.

THIRD DAY.

FRIDAY, October 26—Present a full bench.—T defence proceeded with their testimony.

Testimony of Miss Mary Kerr.

MISS MARY KERR, *sworn.*—Was living at defe ant's house last year; came on the 20th of June, f or five days before his wife was confined; remai ill 14th of July; was there three weeks and th days; Jane was there some of the time witness w there; not when witness came first; can't say h many days she was there with witness; came bef witness left and remained there. Mr. Marshall w to town for the girl soon after witness left—can't s of her own knowledge, but saw girl there soon aft witness slept in the same room with Jane; can't s how long girl was there—a couple of months; w ness had been there a few times, after leaving, ca say how often she saw her there; don't know wh the girl slept—the proper place for her was in Jan room; there were three beds in that room—some the children slept in same room with us, in anot bed. Jane wasn't well when she returned, had b health; Mrs. M. was able to attend to her busin

hen witness left—and was going about the house. here was a study, man's room, stranger's and girl's oom—none others. No sleeping room below ex- pt that occupied by the family.

Cross examined.—Can't say whether children slept ways in girl's room, or only during Mrs. Marshall's ckness.

Mr. Thomas Kiddoo re-called.

Mr. Marshall's boys slept in girl's room;—saw em there in passing through from the study. A erson can see in study from the stable—suppose o; the ground is pretty much on a level; window oove portico; have seen my horse attended to at e stable from window.

Cross examined.—Never saw what was passing in e study from the stable; it is ten or twelve rods from e house—not more than twelve rods.

Testimony of Rev. Thomas Gordon.

Rev. Thos. Gordon, *sworn.*—Am acquainted with cation of stable and house; was there last June; uld see persons distinctly in the study, from stable.

Cross examined.—Don't remember who the person ho was with defendant; could distinguish his coun- nance from the yard, but can't now remember who was; is under the impression that it was witness' other-in-law, Mr. Harshe; window is large—twelve hts—don't remember the size; don't remember w the curtain was. The persons mentioned were ting at the window smoking.

Testimony of Miss Lydia Morgan.

Miss Lydia Morgan, *sworn.*—Was acquainted th Jane M'Fadden for some time past; have had nversation with her relative to John Wilson; can't member just the time; this last summer—think in ne; Thursday before he came to stay at Mr. Mar- all's; Jane asked if she had heard Wilson was sick; tness said she had not heard it; Jane said Wilson s sick and going to die, and she (Jane) must see m; he was then at Cannonsburgh; nothing more ok place then, except that she invited witness to along with her to Cannonsburgh to see him.

Cross examined.—Recollect it was on the Thurs- y mentioned, from its being at prayer meeting at e church; no one else was present at this conver- ion; that was first remark she made to witness; e appeared very much concerned about it, told Mr. arshall of this conversation last month—Monday the last communion at Bethel church—in Septem- r; believe defendant asked her if Jane had told r any thing; she had stated it to others before. Af- this conversation Wilson came to stay at defend- ts; don't know exactly how long he was there.

Testimony of Michael Parkison.

Michael Parkison, *sworn.*—Was acquainted with John Wilson; brought him to defendant's on first Friday of May from Canonsburgh, Jane McFadden was there; she enquired of me whether he was dan- gerously ill, or would recover; she appeared very anx- ious about him; don't remember of her saying any more then. When witness was down next Satur- day, and till Monday morning, Jane asked him whether he thought Wilson was not better. Noticed no more intimacy between them than that, when wit- ness was there at vacations, they would be talking to- gether. Wilson was there on a Saturday in Octo- ber last and went away Sunday after tea. He taught three miles from Marshall's, and went to college at Canonsburgh College the winter before. Witness lived at defendant's five months, two years ago last winter; boarded there and went to academy near there; he had worship that winter at about eight o'- clock in the evening: can't say when in summer— went away at the close of the session.

Cross examined.—Have not been active in hunting up testimony *for Mr. Marshall;* made some inquiries to satisfy himself, not at defendant's request; called at Mr. Lyons' to see prosecutor, as he was passing, was told he could not question her, and did not go in. Supposes it is customary for young men to ques- tion ladies on such delicate matters.

Testimony of Mrs. Anne Chambers

Mrs. Anne Chambers, *sworn.*—Lived with de- fendant nineteen months and some days; two years last July she left; on a Saturday she left and Jane came there on a Monday. As regards Mr. Marshall's character as a man of chastity and correct intercourse with women, saw nor heard nothing wrong of him; never heard or saw any improper word or gesture in his intercourse with ladies; he lived she believed happily in his family, with his wife and children.

Cross examined.—Have not lived in that neighbor- hood since; married since she left his house.

Testimony of Rev. Robert Dunlap.

Rev. R. Dunlap, *sworn.*—Have been intimately acquainted with defendant between six and seven years past; have been frequently at his house, and his stopping at my house brought us into very close inti- macy. Saw the girl—Miss Latham, at his house, on August 3d, 1842. Defendant's reputation as re- gards chastity and correct intercourse with women has been remarkably good—his conversation has been very pure—as much so as any one he is acquainted with. He is rather reserved in his intercourse with females. Never heard him, in a single instance, make use of any impure allusions.

Mr. McCandless objected to any but inquiries as to the *general character* of defendant—not particular facts.

Mr. Lowrie thought he was correct in his questions.

Testimony of Rev. John Stockton.

Rev. John Stockton, *sworn.*—Mr. Marshall was absent from home in the month of February; came from Steubenville to witness' house above twenty miles from home, on the 14th of February, and staid about a week; had heard he was a week at Steubenville. Came also on Friday, after first Sunday in January, from Mt. Prospect and left on Friday; he had been preaching to the congregation five miles off. In December, as near as his memory served, was with him at Pigeon Creek, from Saturday (3d Dec.,) till the following Tuesday, when we separated and both went home. He has been absent from home much, he knew and heard; his duties as agent of the Board of Missions of the General Assembly, would (if he was faithful, as he heard) require his absence; he had synods of Pittsburgh and Wheeling, and part of Philadelphia, to attend to. His agency began about the first of December, and continued until not a distant date; the breaking out of this matter terminated his agency—he stopped, himself; Wheeling synod is partly in Ohio, Virginia and Pennsylvania. Have been acquainted with defendant since 1829—before he was licensed to preach the Gospel—intimately; he came to reside in witness' charge or congregation about that time; during all that time his general reputation for chastity and virtuous conduct has been good—knows nothing to sully his general reputation; have had a great deal of intercourse with him; have seen him in company with females, and in my own family—he always behaved with correctness—as much so as any other person.

This witness was not cross examined.

Testimony of Rev. Henry G. Comingo.

Rev. Henry G. Comingo, *sworn.*—Lives at Steubenville; in early part of February last defendant was at Steubenville; he came on the sixth or seventh (the Tuesday after first Thursday,) and remained one week, preaching for my charge; understood he came from West Alexandria, on the borders of Virginia, Mr. M'Closkey's congregation, as the newspaper contained such an appointment, which he presumed was fulfilled.

This witness was not cross examined.

Testimony of Hon. R. C. Grier.

Hon. R. C. Grier, *sworn.*—Have been acquainted with defendant before he left the East, when he went to school; became more intimate when witness came West in 1833, as a presbyter and elder have known him well for years; think his reputation for virtue and piety equal to any man's in the community; as a gentleman and minister of the Gospel,—gentleman he esteems as highly as any he knows; never heard a breath of slander against him until this matter became known.

Testimony of Rev. Andrew Black.

Rev. Andrew Black, *sworn.*—A minister of the Reformed Presbyterian Church, and well or intimately acquainted with defendant some three or four years; his reputation for virtuous conduct is that of an humble pure minded man; personal intercourse leads me to the same conclusion. Was at his house twice.

This witness was not cross examined.

Testimony of Rev. A. M. Bryan.

Rev. A. M. Bryan, *sworn.*—Minister of the Cumberland Presbyterian Church; acquaintance with defendant began seven years ago; have been intimately acquainted for five years, and have been several times at his house; from personal acquaintance and otherwise has formed the highest opinion of him as a gentleman, a christian and a minister of Jesus Christ.

This witness was not cross-examined.

Testimony of the Rev. James Rogers.

Rev. James Rogers, *sworn.*—Minister of Associate Presbyterian church; have been acquainted probably three or four years with defendant; met him at his church, never at his house; his reputation he believes is excellent; acquainted with it before he knew him personally; met with him as a man of high character, and personal intercourse went to confirm that opinion.

This witness was not cross-examined.

Testimony of Jesse Conner.

Jesse Conner, *sworn.*—Am an elder of defendant's congregation; his reputation in his own neighborhood never heard anything against, of a slanderous nature until this; always heard his character well spoken of—it is good; his congregation appeared to have every confidence in him as a christian, as a gentleman, and as a minister of the gospel.

Cross examined.—Had no particular acquaintance with Jane; never heard her spoken of much—good or bad; heard nothing against her until this circumstance.

Testimony of Samuel Kiddoo.

Samuel Kiddoo, *sworn.*—A member of defendant's congregation ever since he came there; never heard anything against his character as a man and a minis

er of the gospel. before this, it was good. Was intimate in his family; always esteemed by his people as a virtuous man, Wilson was at defendant's frequently whilst teaching; never saw him there; his trunk was at witness' and he told him he was at defendant's frequently.

Cross examined.—Have known Jane McFadden for three years; so far as he knew her character was pretty good for truth and chastity.

By the Court.—Wilson taught three months; commenced first part of September and continued till first part of December—between tenth and fifteenth of those months.

By Defence.—Agency commenced latter part of November, and was for the most part of the time abroad on the business of his agency after that—the whole season through, up to the time of this thing breaking out.

Cross examined.—A week, two weeks, and once three weeks away; with one or two exceptions he returned every week,—from December till February.

By Defence.—The three weeks were in January. In the summer he was away five or six weeks over the mountains.

Testimony of Dr. Robert Wray.

Dr. Robert Wray, *sworn.*—Acquainted with Defendant; first saw him in Presbytery, before he went to Bethel church—ten or eleven years ago—and have been intimate with him all the time since; he frequently stops at witness' house in town: his character he always considered as rather extraordinary good.

This witness was not cross-examined.

Testimony of Arthur Morrow.

Arthur Morrow, *sworn.*—Has been an elder ever since defendant came there; frequently at each others houses. His reputation as a virtuous man and minister is good; always considered him as rather past common, as to virtue and modesty.

Cross-examined.—No particular acquaintance—but knew Jane McFadden; never heard any thing against her truth and chastity—she was not in his neighborhood. Never heard Mr. Marshall speak of her reputation.

Testimony of Chambers M'Kibben.

Chambers M'Kibben, *sworn.*—Acquainted with defendant for seven or eight years at least, intimate; lodged with me at Pittsburgh Hotel, my dwelling and at the Exchange Hotel; had been at defendant's house. His reputation stood as high as any other man belonging to the ministry, he always understood; never saw any impropriety—always considered him above suspicion; he has always been a modest man; the fact is, he always thought he was a reserved man.

This witness was not cross examined.

The defence here closed their testimony, and the prosecution called Wm. Aggers, who did not appear. They then proceeded:

Testimony of Robert M'Kee.

Robert M'Kee, *sworn.*—Had a conversation with the German, William Aggers, who lived at Mr. Marshalls, relative to defendant. He made a statement that he believed defendant wanted to go to bed with a certain woman he had about his house; Mrs. Boyd, he believed it was; this was three or four years ago, he believes.

[Here some slight sparring took place relative to Agger's statement yesterday, and the admissibility of this evidence. The counsel on both sides had supposed Jane was the female alluded to.]

Never had any conversation with him about any other housekeeper of defendant except Mrs. Boyle. —He never told me he had a quarrel with Jane—said he never liked her.

This witness was not cross examined.

Testimony of Alexander Miller.

Alexander Miller, *sworn*—Have known Jane M'Fadden between four and five years; her general reputation for truth and chastity has been good; believes he would believe her on oath.

This witness was not cross examined.

Testimony of John Anderson.

John Anderson, *sworn.*—Have known Jane about four years; she lived in his family, probably about two or three months; never heard her character talked of before this—never heard anything against it. Lives four or five miles from Mr. Marshall's.

This witness was not cross examined.

Mr. Lowrie objected to any further evidence in support of her general character for truth before this —which they had not attacked. The *contradiction* of a witness could not be rebutted by evidence of a good moral character.

Mr. McCandless said prosecutor's character for truth had been attacked.

Mr. Lowrie strenuously contended that evidence of general good character should not be admitted; would admit prosecutor's previous good character.

Testimony of Joseph Reynolds.

Joseph Reynolds, *sworn.*—Am acquainted with Jane for nearly a year; never heard anything against her character.

This witness was not cross examined.

Testimony of John Simmons.

John Simmons, *sworn.*—Have been acquainted with Jane personally since last February a year; knew her by sight before; never heard any thing said against her character before this broke out.

This witness was not cross examined.

Testimony of Samuel Douglass.

SAMUEL DOUGLASS, *sworn.*—Not personally acquainted with Jane; never heard any thing against her reputation—she was still recommended as a decent girl. Heard Mr. Marshall once, at his house, say she was sick and unable to do her work—he said she was a fine girl when well—that was all.

Cross examined.—The sickness alluded to was last June was a year.

WM. AGGERS was again called, but was still absent.

Mr. LOWRIE said he knew what they intended—to call him, cross examine him, and then bring a witness to contradict some statement of his.

Mr. MCCANDLESS.—Certainly.

Mr. LOWRIE continued: he was to have come in with a wagon this morning—the snow had probably broken branches off the trees and encumbered the road—there was much timber in the road this morning when he came in.

Mr. MCCANDLESS.—If he don't come he'll be guilty of *high trees*-on!

Mr. LOWRIE.—The best hit you've made in this cause.

Mr. M'CANDLESS now called JONATHAN LARGE, and offered to prove that Aggers had alleged the defendant was guilty of certain improprieties, although he denied it in his testimony.

The Court ruled the testimony to be inadmissible.

Mr. LOOMIS said he now had an offer to make to the prosecution; it was not the *legal* course, yet he offered it—leaving the counsel for the prosecution to do as they chose as regards it. He now offered to allow them to put the defendant—Mr. Marshall himself, on the witness stand and examine him under oath, touching this matter, and should he refuse to answer any question respecting it they would instantly abandon the cause!

Mr. M'CANDLESS considered this an unusual refinement of the law. He would proceed in a similar manner. Have you ever received any letters from WILSON?

Mr. LOOMIS.—Never!

Mr. M'CANDLESS.—Well, *I have!* This is *another* refinement.

The COURT directed the counsel to proceed with their addresses to the jury.

At about eleven o'clock, Mr. MOORHEAD, the prosecuting attorney, commenced addressing the jury for the prosecution.

Mr. MOORHEAD spoke about one hour, when he was followed by Mr. LOWRIE for the defence, who spoke until the usual recess.

In the afternoon Mr. LOWRIE concluded, and Mr. LOOMIS, his colleague, delivered his address to the jury.

The Court then adjourned till nine o'clock to morrow morning.

FOURTH DAY.

SATURDAY, Oct. 28.—Court met—present a full bench; Mr. McCandless addressed the Jury on the part of the prosecution, after which Judge PATTON delivered the charge of the court, and, at about eleven o'clock, the jury retired and the Court adjourned.

At three o'clock in the afternoon the Court met—present the associate judges, and, on learning that the jury had not agreed, adjourned until five o'clock.

During the interval, and up to the hour of meeting (at five) the immense crowd remained, in anxious suspense, awaiting the decision of the jury.

At five o'clock the Court again met, present as before, when Judge Snowden requested Sheriff Trovillo to go to the jury and inquire if they had agreed upon their verdict, and inform them if they wished any further instructions from the Court, they were ready to give it to them.

In a few minutes constable Snowden appeared and said: "May it please the Court—the jury have desired me to inform your honors that they have not agreed upon their verdict—that they are not likely to agree, and that they wish no further instructions from the Court, unless it be relative to their discharge."

It was then proposed that the jury be allowed to bring in a sealed verdict, which was agreed to by the counsel, both for prosecution and defendant, but as in case the jury should not agree, this arrangement would keep them until Monday morning—

The Court adjourned to meet on Sunday morning, at half past 9 o'clock. Previous to adjournment the Court ordered that the jury should be supplied with necessary refreshment.

FIFTH DAY.

SUNDAY, Oct. 29.—At half past nine o'clock the court met; present, the associates, when the jury were brought into court.

Clerk.—Gentlemen of the Jury, have you agreed upon your verdict?

Foreman, (Mr. Melville.)—We have not.

Judge Snowden.—Is there any prospect of your agreeing?

Foreman.—Not the least!

Judge.—Can the Court be of any assistance to you—or is your disagreement relative to the evidence?

Foreman.—It is relative to the evidence.

Judge, (after confering with Judge Porter.)—Gentlemen, the court feel unwilling to impose the expense of another trial upon the county, not to consider the desire of the parties that a decision should be had.

Foreman.—There is not the least prospect of our ever agreeing.

Judge.—We shall feel compelled to keep you together. We have received a line from the President Judge, who considers it very desirable that you should be kept together—the parties doubtless wish a termination of the case, the expense of this trial to the county is great, and we feel no disposition to impose an additional burthen upon it. Under this view of the case we must direct you to retire again to your room, and adjourn the court until to morrow morning at nine o'clock; should you in the meantime agree, upon sending us word we shall gladly receive your verdict, (feeling no disposition to keep you here another night,) and discharge you. We shall direct suitable refreshment to be furnished you.

Juror, (Mr. M'Clelland.)—It is perfectly hopeless—we couldn't agree if kept together till next Saturday!

Another, (Mr. Rulong.)—No! not if we were kept here a month; we now stand just as we did when we went out of court.

The Jury returned and the court adjourned

SIXTH DAY.

Monday, Oct. 30.—At nine o'clock, A. M., the Court met, present, a full bench, but were considerably delayed by the absence of counsel, &c. When the jury came in the clerk enquired: Gentlemen of the Jury, have you agreed upon your verdict?

Foreman.—We have not, sir.

Judge Patton.—I am sorry, gentlemen, that it has been necessary to keep you together so long; the case was of much concern to the parties, and it was of importance to the county that it should be disposed of now. Is there any probability of your agreeing?

Foreman.—Not any, sir!

Judge.—Gentlemen, you are discharged.

Mr. Lowrie.—When will there be a new panel? We are exceedingly anxious to have this case terminated.

Judge.—Not at the present term; it would be very injudicious.

Mr. Lowrie.—We are aware of that, but our client desires it. Mr. Farley, when will you have a new jury?

Clerk.—On Monday next.

Judge.—The Court would be sorry to see such a course pursued in this or any other case.

Mr. Lowrie.—I have known great injury result from the same course, in other cases. I have seen—

Judge.—It is certainly highly injudicious.

Mr. Lowrie.—I have known a man convicted in such a case after the person charged with him in the same indictment had been acquitted.

Judge.—Let the parties enter into recognizance to appear at the next term—

Mr. Lowrie.—I hope the Court will postpone such a direction, until we have given this matter consideration.

The Court assented and proceeded to other business.

☞ We learn that the jury stood seven for conviction, and five for acquittal, up to nine this morning, when they stood 8 to 4.

SPEECHES, &c.

Reported by Wm. H. Whitney.

SPEECH OF H. C. MOREHEAD, ESQ.,

(PROSECUTING ATTORNEY.)

FOR THE PROSECUTION.

After the testimony had closed, Mr. District Attorney Morehead rose and addressed the jury in a neat, well digested and eloquent speech. Having finished a few preliminary remarks, Mr. Morehead said:—

May it please the Court:—the time had at length arrived, when it became his duty as prosecuting attorney for the Commonwealth, to enter into a consideration of the testimony in the case. The case was an important one, both in its bearing upon the prosecutrix, the defendant and the community at large. It was his object and his intention to urge fairly and candidly, what he had to offer against this defendant. His position as prosecutor, did not render it incumbent upon him to say anything which should militate against the purity of that religion, which we all, as well as the defendant professed.

It was complained on one occasion by St. Paul, that when he was persecuted, his friends had deserted him. This defendant could not offer the same complaint. He was surrounded by his friends, and his brethren in his holy profession were pressed to give him their countenance. They had heard the solemn affirmation of his innocence, from his own lips, and were right in coming up to give him their countenance and support in this day of trial. They, the gentlemen who represented the Commonwealth, could have no interest to outrage the religious feelings of this community. They would gladly have had the testimony to have been of such a character that they could have abandoned the case at once, at the outstart, but it was not so. The evidence brought forward was of such a character that it became their duty to proceed with the case, and lay the whole matter, no matter how painful it might be, before the jury.

It was no venial charge which was laid against this defendant. It was one of a high and awful nature. The large audience assembled showed the interest which this community took in it. The defendant was charged with having violated the sanctity of the high moral profession to which he belonged—as a head of a family he is accused of having violated one of his own domestics. It was this serious charge which caused the great interest which the community appeared to feel.

The main question to be inquired into in this case was the truth or falsity of the testimony of the prosecutrix. There were many ways of determining th credibility of a witness' appearance when upon th stand. In this case all the known and usually adm ted tests of credibility were in favor of the prosec trix. The jury had seen her upon the stand and l appealed to them, they could judge for themselve She had not been forward in giving her testimo in this case. The counsel were obliged to take gre pains to bring out the points to which she had bee called to testify. There had been no eagerne nor forwardness on her part to testify; her statemei had to be drawn from her by counsel, in almost ever instance. If the story had been false it would hav been prepared for the occasion; it was evident to a who had heard her that it was not prepared, for it ha been drawn out in detached portions; it was no co tinuous premeditated story, neither had she been r luctant to tell the truth. No question which had bee asked during the long and tedious examination ha she refused to answer, and she had answered th questions of defence as freely as those of the pros cution. And in the matter of the questioning, th defence had this evident advantage: the prosecu tion from the nature of the case were compelled t put their questions indirectly and thus had difficulty i obtaining an answer to the point, while defence pu questions directly, and in every instance they wer promptly answered. These are two great tests c credibility. The manner in which she had expres ed her testimony was also another evidence of i credibility. This was apparent from the whole c her evidence.

An instance; in answer to a question of counse the witness had said that "she knew when the chil was begotten," and immediately after, in answer to question how she knew, she replied that "it was b counting backwards." Answers of this kind sho that a witness should be the more credited, as the prove there were no prepared answers to question which she might have supposed would be asked She had said that defendant had referred her to th "chapter of David" and he presumed the learne counsel for the defence would make capital out of thi as there was no such book in the Bible; yet all knev what she meant. Answers of this sort proved he testimony to have been unprepared. He would ven ture to say that there never was a case where, in th course of so long an examination, no more capita had been made out of such a witness as this—a poor servant girl coming to relate the story of he shame before so large an assemblage of men. Th only thing like contradiction which he could perceiv in the testimony given by this witness, was that con

rning her refusing to have intercourse with the defendant when she knew that she was pregnant, and en this she had explained.

He then referred to the relative situation of the rties to each other, and to the community. Defendant's sacred robes of office gave him a standing d character before the world. He was surrounded d supported by influential friends, while the prosecutrix was a poor servant, the daughter of a widowed mother, whose support at least in part she was.

If this prosecutrix's story was true, there was more rallel between the cases of the defendant and David, than perhaps he was aware. The prophet had ome to the King and told the story of the man possessed of power and riches, who had taken the poor an's lamb, and David's anger had been kindled gainst him who had done this thing, and he said he ould surely die. And Nathan said to David "Thou rt the man," and if this girl's story was true the defendant was "the man," and his case was a similar ne to the King's.

The learned counsel had noticed the fact that she ad stated that this seduction took place in ten minutes, and had alluded to the improbability of such a tatement. It was his opinion that witness had given hat statement as she had others when pressed to ive a positive answer as to time. How was it possible for her to have estimated the time under these eculiar circumstances? It might have been ten inutes, or it might have been fifteen minutes, or it ight have been half an hour—how could she estimate the time? He admitted that under ordinary ircumstances a seduction in this short space of time ould have been impracticable, but he was her master, the pastor of the church to which she belonged, ne to whom she had been accustomed to look for nidance, and who exercised authority over her, and n authority which no other could exercise. He vas her instructor in all matters in which she needd instruction, one to whom she looked up and vhom she had been accustomed to obey.

He then alluded to the statement of Thomas Kidhoo that the girl had told him that they had intercourse but once, and then at the suggestion of her nother had admitted it twice, while before the jury he had stated that the intercourse continued for several months. Was it surprising that to persons who ad come in the manner in which the Committee of he Church had come to her, she should have disposed of the matter as briefly as possible, seeing no ecasion to go into detail in regard to the matter.

He then referred to the statement which she had nade, that there was no quarrel between herself and ner mistress at the time of her leaving Mrs. Marshall's. He did not mean to cast the least imputation, he said, upon the witness, Miss Jane Lee, but she herself had admitted that she was not in the same room and that she had not heard all the conversation which had taken place. Miss Lee had also stated that the quarrel arose out of a dispute respecting her pregnancy, and the alteration of a dress, and it was hardly probably that a quarrel of this kind should have taken place, at the time mentioned, when her condition must have been evidence to all, as it was only three weeks previous to her delivery.

Again, it appeared that Wilson had been residing at defendant's in May last, when defendant and his wife were over the mountains. At that time the prosecutrix must have been six months advanced in her pregnancy, must not defendant and his family have known it? Could any member of that jury have a female about his house under those circumstances without both himself and his wife being aware of the fact!

The question of the statements made during labor, when the prosecutrix supposed she might immediately be summoned to the presence of her Maker, had been discussed and was proper evidence for the jury to consider, in corroboration of the statement she had made in court. The circumstances in which she was placed at the time of making those statements were of the most solemn and awful character. The solemnity of an oath, in the presence of God and this honorable court, could not be more so. He recounted the circumstances under which those statements had been made and compared them with the solemnities of an oath, in open court. He then called the attention of the jury to the testimony of Dr. Curry, and read it to them.

He then alluded to the attempt to shuffle off the charge upon an absent friend of the defendant. He would not attribute this to the counsel but to the defendant himself. He considered such an attempt in the highest degree mean and cowardly. He spoke of the reputation of both defendant and Wilson—to both a good character was dear—and that of the latter was as dear to him as the defendant's own could possibly be to him. Was the character of the absent man to be sacrificed to preserve that of the defendant untarnished? If Wilson was living and was guilty, if he was the tithe of a man he would have been present and sacrificed himself to save this defendant. Wilson was represented as an honorable man—a man of unblemished reputation. A subpœna from this honorable Court would have brought him from the remotest corner of this Commonwealth. If here, however, he might testify, his testimony would go to exculpate the defendant if he was innocent.—If he refused to testify on the ground of criminating himself, he would himself have arisen and stopped the prosecution at once; had he been there to testify, the defendant could have been cleared. But his absence seemed more to have been desired by the defendant than his presence.

He then adverted to the fact that the defence had called Mrs. Couch to testify to familiarities between prosecutrix and witness in the month of May, when the girl must have been six months advanced in the condition she was in. She had also alluded to a "chicken" and "some pies" which in his opinion should have been considered a mere kitchen squabble—a thing to be settled in the pantry, and not brought into Courts of Justice. Indeed, the old woman might have been equally in fault with the young one—it was usually the case in such matters. Besides, Wilson was sick in the house and the chicken might have been set aside for him.

He did not think Mr. James Williams stood in a very enviable position in his attempt to carry out the charge against his absent friend and fellow student, and room mate. He alluded to his manner upon the stand; the small amount of matter to which he had testified, which, in amount, he said, was, that they had walked to church together and used ges-

tures in conversation, and that in the month of June, when he had visited Wilson at Mr. Marshall's, a mysterious transaction had occurred in the study room. His testimony should, at least, be received with many grains of allowance.

The learned gentleman did not believe that Mr. Aggers, the Dutchman, ever had a very clear head, and that the green eyed monster, jealousy, had rendered it thicker than usual on this occasion. He had denied the jealousy, but had not his own testimony proved it? He alluded to some points in his evidence in a humorous manner. He intended to urge that under the feelings which then filled his breast, Aggers was *non compos mentis*. If the finding of a handkerchief could urge on Othello to the extent of desperation to which he is depicted as having arrived, what wonder that the seeing the prints of two persons on a bed, in broad day light, should turn the head of a poor Dutchman!

In summing up, the learned gentleman compared the situation of the defence, in the present case, to the joke which the world had been laughing at for the last few years of a similar case in the life of Mr. Pickwick, when the elder Weller addressed his son Samivel with "why did'nt you prove an *alibi?*"

He spoke of the fact that the girl had been kept alone by her friends since the matter transpired, and deemed it a prudent course.

In conclusion the counsel remarked that he had gone over the testimony and had no desire to add any thing more. There were two things however, to which he would again allude, one was the statement that even to three weeks before her delivery the girl's condition was a matter of dispute, and the other was the stories concerning the intimacy between the girl and Wilson—and that Wilson had been left alone with her at defendant's in the month of May, when she was six months advanced, and her condition must have been known. He also again spoke of the circumstance that Mr. Wilson had not been brought into court.

He then summed up upon the merits and importance of the case, both to the defendant and prosecutrix, alluding in the most feeling terms to the high standing and position of both. He spoke particularly of the awful position in which the girl would be placed, if she was left in the eyes of the world, a perjurer and public prostitute, and with this remark he closed his address to the jury.

Reported by J. Heron Foster.

SPEECH OF WALTER H. LOWRIE, Esq. FOR THE DEFENCE.

With submission to the Court,—

Gentlemen of the Jury: I might ask why all this crowd? why such intense anxiety manifested by this enlightened community, in relation to this humble—this unknown and this unpretending citizen?—one as poor as any in the community, as ministers of the Gospel always are? Why, gentlemen, are these halls intensely crowded from eight in the morning until four in the afternoon—why has this been the case for the past three days? The defendant has no wealth to recommend him, none to assist him in an effort to trample upon justice! Why are holy professors of religion here in such numbers, with anxious countenances? Is it that they desire t laws to be trampled upon, or that they wish impun to stalk unpunished and unrebuked through o land? The accused has no wealthy relations to e ert themselves in his behalf, he is *poor*—poor in mo ey and worldly wealth—but rich, incomparably ri in worth and virtue! It is his high moral worth th brings them here; they believe him persecuted—i famously prosecuted for an offence of which tha believe him perfectly innocent,—they come not t defend crime or to exempt lust from the operatio of the law.

In this case, gentlemen, we have none of the usu advantages of a person accused in this court, allo ed by merciful laws; we have not the advantages wealth or influence, but we *have* advantages whic wealth has not; I rejoice that virtue and religi have advantages, that their possessor stands on a eminence—for myself I am happy to see that th community placed confidence in the high professio of honorable and consistent christians.

The Commonwealth has presented its case ge tlemen, and we have presented ours. The learn counsel for the prosecution have conducted the case in the usual manner—he had no objection to th manner in which the prosecuting attorney (who h preceded him) had treated the evidence: he commen ced by referring to the appearance of the prosecutr and principal witness. I do not object to her ma ner of giving testimony; some of the details the ge tlemen said were disgusting—so they were, but mo est or disgusting they had no effect upon the witne —they produced no variation in her countenanc They contended that she might be a virtuous wom in other respects, but I cannot believe it. She to her tale well enough, certainly, as it was carved o for her, but I am certain she was not subjected to rigid cross-examination, nor was the legal acume spoken of by the gentleman, displayed; I appeal you, gentlemen, whether any effort was made on o part to make her contradict her own statement? N leading interrogatories were propounded, exce one which could not be put in another shape—I a lude to the question whether she ever had intercour with another than this defendant.

[The Prosecuting Attorney explained.]

We did not desire to obtain her contradiction her statements made to you, gentlemen: we got wh we wanted—the details of this transaction. I w allude briefly to her story. In July of last year, b tween the beginning and the middle of the mont between nine and ten o'clock of the night, after fam ly devotion, she had retired to her bed a considerab length of time, when the accused came to her bedsid without a candle and without having divested himse of his clothing, and expressed his desire to lay wit her; she resisted, he insisted, and accomplished h purpose! What time was he there—fifteen minute no—not fifteen minutes! Ten minutes? Yes— might have been *ten minutes!* The counsel for th commonwealth think a minister can seduce a woma in ten minutes, especially if she was a member of hi family, but I feel very much inclined to doubt it.

Admitting her chastity up to that time, and wha must we think of this girl, from her own statement She joined with the man she now accuses of thi crime in the prayers of the family altar, in imploring

blessings of the Most High, and in fifteen or enty minutes after she joined in this act of devo- n the two were locked in the polluting arms of lust! *n* you suppose she was virtuous in her thoughts, en were she so in her actions? Would she not ve turned in disgust from such a proposition—hor- r-stricken at so infamous a proposal?

But gentleman, can you suppose such a thing pos- le—that so bold, impudent and horrible an at- npt, with no previous intimation of any such de- e on his part, could have been successful? She esists"—yet how feeble her resistance! He sue- eds, and next day he repents, and says David did ewise, and that their sin was no greater than Da- d's and would be forgiven. But one week after is—but a week after this repentance they again e from prayer—they again leave their devotion— d again this pollution is accomplished! Once— ice a week, always between nine and ten o'clock, d always immediately after prayer, this occurs for me fifty times,—committed by a man in whose esence she had never an impure thought. Gen- men, we have been unwarned of the mode in hich we were to be attacked and it was impossible r us to prepare as we otherwise might have done— it we point you to the improbabilities of this girl's ory—to the statement she makes of the time occur- ed in this transaction, with confidence. Why, e most infamous whore in christendom couldn't seduced in ten minutes! Examine her statement— ear her tell of this pure-minded man committing is offence repeatedly—returning, like the dog to s vomit, to this disgusting connexion, and tell me, n it possibly be true?

From July last year to February of this, this dis- usting connexion existed—but she returns to ex- lain, he was away, and *then* it did not occur. No oubt it *did not occur then*. But in giving in her tes- mony relative to these occurrences, she might have een thinking of another than this defendant, and king so little note at the time of her disgraceful leasures, she had entirely forgotten his absence; her xplanation was an after thought.

But to another matter; on the twentieth of June Miss Kerr came there, she remained till the fourteenth f July, and Mrs. Marshall was confined on the twen- y-fifth of June. Jane returned sick to Mr. Marshall's, nd slept with Miss Kerr until the latter left the house; uring this time the children slept in the room vith them—this was the company until the four- eenth of July; another girl then came in Miss Kerr's lace, occupying the same room. She was there or two or three months, and from the first to the ourteenth of July Miss Kerr was there, yet, if we re to believe this girl, *during this time* the defendant ad the impudence to come into the room! This hild also slept there—a girl three years old when his connexion commenced, and nearly four when it erminated. Would any father—would any beast go o bed with his own child, and commit adultery with girl who was in bed with his own daughter? Would ny one have risked the commission of the act under uch circumstances—would any one perform so foul deed with one arm perhaps encircling a beloved hild! Would any man do so in presence of anoth- r female, unless she were as depraved as the girl vith whom it was committed! None, unless he were the vilest brute imaginable. Yet she would have us believe that during eight long months, week after week, he acted in this monstrous manner, notwithstanding we have proved that Miss Kerr and the children were there—in that very room; from the beginning to the middle of July Miss Kerr was there, Jane was sick, and the child might be easily awakened and scream out—yet weekly, even semi-weekly he committed this daring crime!

Such are some of the circumstances of her testimony—of what her counsel term "the simple story of her wrongs" and a most improbable story it is.

Gentlemen, this is a little information made by her; some time before this information, two or three days, she let it out that Mr. Marshall was to be charged with the paternity of her child—this was kept secret until the last week of her pregnancy—which was, probably, up to that very time, denied. In such cases the first thing is for the party to be sworn "to tell the truth, *the whole truth*, and nothing but the truth;" this information was made one day after the birth of her child; at that time swears as follows:

[Mr. Lowrie then read from the affidavit before the justice, where she speaks of but one instance of connexion, to wit, in the first part of December.]

This is the "simple story" she tells; but a short time before, when asked as to the number of times, "she stated but once; the mother replied, 'twice, Jane!' then the girl said 'yes, twice!'" From the information, the only inference to be drawn is that on that night, when she there alleges the child to have been begotten, was the only time—that there was no other intercourse; that on the first of December, and at no other time the child was begotten; it says nothing about other intercourse, and who is there would not infer that to be the time of the commencement and the close of their intercourse—or at least the commencement? The girl now speaks of "counting back" as her means of ascertaining the time of the begetting of this child; I am not desirous of taking advantage of her contradiction of her testimony before you; her counsel states and I am willing to admit that this inconsistency *is* easily explained.

Gentlemen, I will now refer to a fact which is admitted by the prosecution—the effort to keep the girl secret, to prevent any one from hearing her statements—then we find that Mr. Marshall is refused an opportunity of cross-examining the person charging him, contrary to the constitution. It seems that she was kept apart by her friends, and that her mother did have something to do with the concocting of this story. Perhaps the old lady, in hearing her daughter's story, thought it improbable that so great an effect should follow one connexion and advised her daughter on the subject.

We have heard, gentlemen, of a case where a married man was charged, on the oath of a girl, with "fornication and bastardy," the girl swearing to but one connexion with him; he requested that the charge might be adultery, that he might obtain the sympathies of the public, and induce the jury to hesitate giving a verdict against him. This was done, and the prosecuting attorney told the girl she must tell the whole truth now, if she had not before, and acknowledge that she had not done so in her first information, were such the case; "we'll see," said he, "whether he shall escape." She swore in Court to numerous instan-

ces of connexion, and the man was convicted. I am inclined to think that similar advice had been given in this case—not by the attorneys but elsewhere.

It was a singular fact that throughout this whole case the counsel appeared to have doubted their own witness. After the interview with Mr. Kiddoo and Mr. Donaldson, the elders who had the spiritual care of her, as had Mr. Marshall, she was kept from all access with the world; these men commissioned by the church, had an interview with her, after much difficulty, in the presence and under the promptings of her mother, in which she alleges these connexions to have occurred but "once—yes, TWICE"—*now*, it might have been fifty times!

There were other contradictions in her testimony which I will refer to. It is a singular circumstance that she denied her pregnancy almost till her delivery. She also denied having been turned away, and her counsel spoke of it as "absurd." She wished, it seems, to preserve her innocence until put to bed! When did she charge Mr. Marshall with the paternity of her off-spring? We cannot tell; it was kept secret by her friends, who prevented her from being examined—we cannot therefore prove her former statements. Our advantage is solely in the character of our client as a virtuous citizen and on her own contradictions.

The proof of her having been turned away is important; if she had not been, this story would not have come out. If the defendant had been guilty think you he would not have cautioned his wife against harsh treatment of this girl—think you he would have permitted this wrangling about the piece of silk she had taken from her mistress for the purpose of altering her dress to suit her enlarged person?

When she left Mrs. Marshall's she told her she "should rue the day she spoke against her character," and most effectually she has done so.

(Here the Court took a recess of an hour, after which Mr. Lowrie continued.)

Gentlemen of the jury: No little reliance is placed in the declaration of this girl in the extremity of her labor; so far as we know up to this she denied her pregnancy, and denounced the rumor of it as false. Before—a little time before—she acknowleged it. Up to July—within a month, she denied it; one week before she acknowledged it and charged Mr. Marshall with being the father of the child. Of the evidence referred to the counsel say "it *corroborates* her testimony in Court;" it then stood in need of *corroboration*, before her veracity was assailed! They called this witness, and the law makes it evidence, they say; if so, you are not bound to believe it, but may reject it or not, if you please.

When the Doctor was sent for, before she was put to bed, she twice said Mr. Marshall was the father, and when in bed she reiterates the charge and says "after suffering so much do you think I would tell a lie? Has no one ever told a lie after suffering pain? Do you think she had no regard for consistency? She had made the same declaration to her uncle and to the community; would she now retract it, and acknowledge herself a *liar* as well as a fornicator and adultress? Is it anything more probable that a man will tell the truth if you squeeze his finger? An attempt is made to place a ridiculous weight on this testimony, yet there is no evidence that she supposed herself before Almighty God, more than when sworn by Him who lives for ever and ever, in this court-room.

I have known several cases where denials of pregnancy have been made in a similar manner; a young widow, at a period so long after her husband's death as to render it impossible that it was his child, was believed to be pregnant; she persisted in her denial until brought to bed, when she said she had the cholera, and was only convinced to the contrary by the birth of the child, and then she persisted that she didn't know how it got there! Another case I have read of, in which the peculiar providence of God was made manifest in the cause of truth and justice, and for the protection of one of his faithful followers; he trusted in God, and proved that reliance to be a safe one, and was at last released from the charge; this man was married, and as honest and honorable as he was pious and virtuous, he was charged in Carlisle with the paternity of an illegitimate child, it was proved by the woman on oath, believed, and he was found guilty; borne down by the ignominy of the charge, he removed from the neighborhood, and settled with his family in the West—near Beaver, where he became attached to the church; twenty years after this, whilst he acted as an elder in the congregation, a woman applies for admission, but who felt a deep sense of her own unworthiness, stating that she had sworn a child on an innocent man twenty years before! and that innocent man was sitting there, as one of those who were to decide on her admission; he was thus acquitted and his character was purified, whilst the perjured yet repenting woman was again admitted as a member of God's church.

You are asked, gentlemen, to save this young girl's character from utter perdition. How save the character of an acknowledged polluted fornicatress, who swears she had connexion with this minister of the Gospel some fifty times, and whose character is already destroyed by the begetting and by the bearing of this child? How, I ask you, unless by putting the paternity on a Christian minister, on her own master—by putting the odium upon *him*—by terming her a martyr, constrained to crime by him? She is to be washed clean by his atonement—he is to be made the scape-goat for her sins, and to be the victim, whilst she is to be characterised as a martyr.

But, say the counsel, he has acted "meanly" in putting the blame upon Wilson. And this is a matter of *meanness!* I have a high estimation of the gentlemen's morality and judgment, but never dreamed they supposed Mr. Marshall should suffer for the offence of Mr. John Wilson! How chivalric,—Wilson was intimate with him, a member of his family, endeared to him by the tie of friendship. How noble, thus to ruin his own character to save from reproach that of his friend!

Wilson was originally a servant of the defendants, but aspired to something greater—was assisted by him, and went to college a season, teaching school to support himself in the winter. Mr. Marshall was his helper in his endeavor to rise somewhat above his former station and to render himself useful in the community; he was received at his house and treated as a son. It seems probable that he took advantage of that kindness and if he was now suspected whose

ault was it? Wilson's surely, in not coming forward. The counsel ask us triumphantly why we did not bring this man forward, and kindly remind us that the process of this Court is binding in every nook and corner of the commonwealth. I ask of them, "why did *you* not call him? You state *you* have received letters from him—we have received none; we do not deny that we know where he is."

If he heard Mr. Marshall charged with this offence and did not come, if he possessed no gratitude, no kind feelings towards his benefactor, there was no use in our trying to bring him here; suppose him proceed here, would he say whether he was the father of this child? he would refuse to answer! the gentleman says in such a case he would instantly abandon the cause, but I am *sure* he wouldn't abandon it, after reflecting upon it, on account of such a refusal. We could have brought him here, we admit, but when here he might refuse to answer; all his inclinations were against us, and if asked if he had connexion with the girl, he would say "no"—if not guilty, he would tell us so. I think he would deny any such connexion. If he would not come to rescue the character of one who has taken charge of him in sickness and clothed him when naked, I should not be surprised at his testifying so as not to assist Mr Marshall.

It appears from the testimony that Wilson was intimate from September till December, teaching school in the neighborhood, and frequently at Mr. Marshall's house—often over two nights. The counsel for the prosecution say none could be so blind as not to see her pregnancy in June 1843. I believe them. Marshall and Kiddoo thought so; Marshall charged her with it and she denied it—Mrs. Marshall charged her with it and she denied it! it is good evidence of her innocence that they *believed* it; in May and June they couldn't help believing it! At that time Aggers found in Wilson's room the print of two persons on the bed—Wilson was evidently co-habiting with her, yet no one could see her pregnancy! no such familiar intimacy with a pregnant woman could exist unless Wilson made her pregnant; would a stranger have intercourse with a woman six or seven months gone with child—do you suppose Wilson would have gone to bed with a woman who was pregnant, if he knew not who was its father?

In the second place, gentlemen, I do not consider the conversation of these persons on their way to church unimportant; nor was there any thing so peculiar in the manner of Williams, who testified to it, as the learned counsel supposed—nothing in his conduct at all suspicious. He saw them after the hour at which the meeting commenced, when all around the church was unusually secret; they were in very earnest conversation—the one affirming and the other denying. This was in June, or at all events in the spring of the year—she was pregnant then, so obviously so (the learned counsel say) that all could see. What, then, could their conversation have been? What would naturally be the subject of affirmation and denial at such a time—in a conversation between a young single man and a girl obviously pregnant? Were there any propositions?—I know not! Perhaps he was insisting upon a mariage—it is certainly not hard to account for their *earnest* convention at such a time!

As regards the mysterious affair in Wilson's room, the learned counsel say all we have is this "poor, ignorant *Dutchman*." The witness is certainly ignorant of our language—but I appeal to you gentlemen, did you ever see a more honest countenance? Did you ever see a more intelligent face, for a workman? I make no exceptions—he is a mere workman—"a *Dutch*-man," but I never saw a more honest mode of giving testimony than his! His character cannot be impeached. (Mr. McCandless here remarked "He is unknown to fame") No, gentlemen, he is *not* "unknown to fame;" he has lived in this neighborhood for some four years, yet they could not attack his character. And the counsel say this fact is "improbable!" "Improbable" that she should fornicate with Wilson when she says she did so some fifty times with another! "Improbable" she should do so in the day time, when she affirms she committed it night after night for months! "Improbable" she should be guilty of whoredom when she swears to it! We have proved it by a witness than whom I have never seen an honester—one who, when he understood the questions propounded, answered those of the opposite counsel with as little hesitation as he did those of the defence; this man saw them together, and saw her soon after with her clothes rumpled, and this in daylight. Why was this? He saw Wilson come down another way, this naturally made him suspicious, he went up stairs and saw the suspicious appearance of the bed—it was not necessary to look at her bed—she had gone in unto him and not he unto her!

Another circumstances, is his seeing the man at three or four o'clock in the morning, who left the kitchen and went into the strangers' room. I cannot say that any improper connexion occurred in the kitchen—they might have been "taking a piece" there, at three or four o'clock in the morning, but it was more probably in the kitchen chamber! The learned counsel thought the witness should have recognized the man "in passing," but the witness did not state they passed other. The jury will bear in mind that the "strangers' room" and the "students' room" are the same—Mr. Marshall had kept an academy, and the visiters were chiefly students from the adjoining college at Cannonsburgh.

Gentlemen, this child must have been got in the first part of December, as she says she ascertained "by counting back," and we have proved that Wilson was there, from the end of November to the beginning of December, frequently over night.

The counsel tell you that we have here "a poor girl, contending with one of the most powerful men in the community." "Poor"—miserably "poor" indeed, is that woman who has lost her virtue! The defendant's power and wealth are in his virtue and purity. In this case, we have sin arrayed against virtue—vice, folly, lust, against honor and purity—truly have we *poverty* against wealth—poverty of character against great wealth of character! They allege that by making this charge she has arrayed the whole neighborhood—that his whole congregation are in arms against her—yes, gentlemen, with one voice they come here proclaiming the utmost confidence in his innocence, that they consider him virtuous! "The whole country is up in arms," say they; possibly they are—for I know that highly mor-

al community believe this charge a sheer malicious fabrication. Well may a man stand up and say "not guilty" when he is supported by all who know him. We have an advantage in this I acknowledge, as we have in the difficulties of her own statement—in its improbabilities—and in the testimony of other witnesses.

Why was this girl so anxious to see Wilson in May or June? Why was this, if she was big with child? "Poor Wilson was taken sick!" But was this anxiety nothing but a feeling of friendship—nothing but affection; was there no selfishness in it? Was there no anxiety for herself and her unborn babe? Was there no feeling for the mother and the child in this? Wilson was the only one who knew of her pregnancy at that time; well might she desire him to survive, that her dishonor might be prevented by an early marriage. There could be no other reason in a woman big with child desiring to see a single man!

It is while she was big with child the intercourse we prove took place. In February, she swears that it stopped with defendant, on her discovering her pregnancy, but it did not stop with Wilson. It was then her clothes were seen rumpled and his bed tossed; it was in June Williams found Wilson so confused at his entrance into the study, heard the door of her room shut, and saw his bed tossed. When did this girl first acknowledge her pregnancy and charge Marshall with the paternity of her offspring? Not till long after, when Wilson had gone! Wilson left in July and in *August* this charge was made!—Wilson had gone, forever—there could be no marriage—there could be no blotting out out of this disgrace! Within a week she acknowledges her pregnancy and charges Marshall with this offence. Up to that time she had trusted that she might still escape the opprobrium—that her son might not be pointed at as a bastard and the child of a fornicator and whore! But all hope was lost—her character was gone—there was no marriage—no legitimating the child—and *then*, and not *till* then she makes this charge!

When this is known she is kept secret—access to her is denied, and even the poor pitiful information is withheld. The justice, big with the dignity of his office, wishes to keep something in that great breast of his, that may be exclusively his own, and denies even a copy of this information, taken in the absence of the defendant! He may yet learn, (if in fact he can learn anything,) from the Bill of Rights, that it is the privilege of every man to be heard by himself or counsel, to meet his accusor face to face, and to cross-examine him—but perhaps this representative of the laws never saw the Bill of Rights! We never saw this information, and were compelled to guess at all the circumstances—knowing nothing but the main charge; we had therefore no opportunity of proving her contradictions.

This is not, I am sorry to say, the first case of the kind; he knew of one, not of so high a character as this defendant, in whose behalf the Lord interfered—his God saved him from destruction; the girl's statement was heard, the acused cross-examined her, and her contradictions were so absurd, that on the solemn trial of the case the learned prosecuting attorney there gave up the case—abandoned the infamous libel!

There is another case: a minister of the Protestant Episcopal Church in America, living in a section of country where, unfortunately for him, but few of his sect resided, was charged with this offence; prejudice was strong against him and conviction followed. His innocence now appears as clear as the noonday sun, although but a year has passed over. It was impossible to meet the charges then, but they have been refuted since.

Ah, gentlemen, I ask you to refer to the character of our client! Was ever a purer or more honorable character—purer morals or higher reputation proven in this or any other Court? Is this—all this to be prostrated in the dust on the oath of a girl of acknowledged infamy! There is one virtue in woman reigning supreme above all others. The Greek and Romans had their household gods—woman have their, also. CHASTITY is her houschold deity—it stands pre-eminent. When that is gone, *all* is gone—all her household gods are prostrated! Her chastity is violated—how can they ask you to believe she reverences *any* god! Depraved in one, can all other virtues be held sacred! Her Chastity is gone—where can her Truth stand? Yet she asks you to believe she has elevated *Truth* supreme above all her gods! If so, George Marshall is an adulterer of the vilest sort—a man who never intimated an impure thought—has *he* cast down all *his* gods at the altar of infernal lust! An impure thought must find words—the cloven foot will shine out—yet in all this man's intercourse with those most intimate with him, never was an impure word heard—or lascivious action seen—yet, if we are to believe her, night after night—week after week—he had this impure connexion with her! Others, gentlemen, as honorable and pure men, have had bastards begotten in their houses; such a thing may happen to many of us—it may happen to men as pure as ever entered the pulpit!

In cases of this kind, gentlemen, when the testimony is inconsistent and improbable—when the accused was away almost all the time from December to February—when we cannot, in the very nature of things, controvert the main fact—after the character we have so fully proven—*can* you, gentlemen, believe George Marshall the impure brute she alleges?

Reported by Wm. H. Whitney.

SPEECH OF A. W. LOOMIS, ESQ., FOR THE DEFENCE.

After Mr. Lowrie had sat down, Mr. Loomis followed on the part of the defence, in a speech which was on all hands acknowledged to be one of his most masterly efforts, as an argumentative speech it was one which we have never heard surpassed—rarely equalled.

After the usual preliminary remarks to the Court and Jury, he said:—that this case presented an appalling and fearful exhibition, its tendency, characteristics, and prevailing features were marked by corruption of the deepest dye—by depravity of the most vile character. A corruption was here whose breath was more poisonous than the venemous serpents of India and Africa, inasmuch as it was aimed at character, which was dearer than life. If this girl's testi

lony was allowed to be true, there ought, he said, be no more virtue among mankind: he had almost said no acknowledgement of truth, and of justice, and of God. But before this testimony was received as true, the minds of the jury should be directed by calm deliberation. They should examine in all its points, and all its bearings. They owed to this gentleman—they owed it to his character and position in life—they owed it to his relations, to his fellow men as a christian, a husband and a father, the best faculties with which the God of nature had invested them. He then alluded to the different kinds of evidence upon which, in the trial of causes, it was customary for juries to place reliance. When they were called, in the trial of an important case, to rely upon verbal evidence, there was great scope for the exercise of their judgments—for the use of their knowledge of their own passions, and their knowledge of their own hearts. When, upon a trial, evidence was adduced in which statements at variance with general probability were set before them, which their own knowledge and experience told them were contrary to the feelings which, as men and as human beings, existed within their hearts, a jury were bound to exercise all the information which they possessed, to form a correct judgment in regard to it. In this case they would have peculiar scope for the exercise of such knowledge, and it was their duty to bring it to bear upon the testimony which had been laid before them.

He then stated at length the nature of the case pointed out in what the charge consisted, and asked how it had been supported by the evidence which the prosecution had brought forward. The girl had sworn to the fact alleged; of that there was no doubt—there was no doubt but that, if this girl's testimony was to be received as true, the commonwealth had made out their case. But this was the important question, and vital to the point at issue. It was a matter for the judgement of the jury whether this testimony was to be so received by them. It was this question which, under the solemn oaths they had taken, they were called upon to decide in the case they were to consider; the accusation, so far as related to the main fact, rested solely upon the testimony of the girl alone. No other witness had corroborated her allegations in the least degree, No one had seen, or was alleged to have seen, any instances of intimacy between the defendant and the prosecutrix, nor between him and any other woman, if sustained in this point, the case must rest upon the evidence of the girl alone.

He then spoke of the circumstances under which the girl had come into Court, and discussed in the strongest language their peculiar nature. She was an interested witness, and a strongly interested one too, for not only did the maintainence of her child depend upon the verdict of the jury, but a conviction in this Court would be the ground work of a suit for damages in the District Court, the avails of which would be for the benefit of the prosecutrix in this case. She was then an interested witness, but owing to the peculiar nature of the circumstances, in cases like the present one, the secrecy usually attending the commission of crimes like this, the law of necessity made an exception and admitted a witness, who, from the nature of the case, must be interested in the result—it must be—otherwise in nine hundred and ninety-nine cases out of a thousand the guilty person would escape the just punishment of his misdoings. But he begged that the jury would remember that it was only from the necessity of the cause, that the law admitted testimony of this kind, and in case of such a witness being brought before a jury, her credibility rested exclusively in the belief of their own minds. It was not in the power of the Court to exclude the testimony of such a witnees as inadmissible, under any circumstances, but the credibility of the statements which such a witness might make upon the stand, was a matter of consideration for the jury, and one to which, in this case, he hoped they would give the best powers of their minds to determine. In the present instance the case for the prosecution was sustained solely by the testimony of a witness who came into Court under these peculiar circumstances, and he demanded, in the name of justice, that the jury should carefully scan and weigh every circumstance connected with the allegations which had been made, and put them in opposition to her statements.

The prosecutrix came before them too in another light—as an unchaste woman—one whose character was gone. Her reputation she had lost by her own act. Alas, she would have to learn that character was a Phœnix which could expire but once; and never arise again from its ashes. She came before the Court admitting her own impurity, and if they could not rely upon her chastity, he asked what reliance the jury could place upon her truth. Chastity was peculiarly a female virtue—it was the foundation for all the other virtues; when that was gone all was gone which was worth preserving. This girl had lost that jewel which gives woman her character, and how could they rely upon the truth of one who had lost that priceless jewel?

Again, this charge is made against a clergyman—a minister of the Lord Jesus Christ—a man who had officiated in that sacred capacity for more than ten years without a shadow of reproach. It was made against a husband who had contracted the most sacred obligations with one who was the partner of her youth and her affections. It was also made against a father.

The charge upon its very face was improbable, inasmuch as it was made against a professed minister of Christ—one whose reputation had been previously untarnished.

It was improbable, being made against a husband. Had the allegation been made against a young man—one who under the promise of marriage might have seduced the girl's affections, it might have been borne a semblance of probability upon its face, but the charge was laid against a minister of Jesus Christ, a husband and a father—was it probable that one bound by all these sacred and tender ties could have been guilty of such an act? He appealed to the jury to say.

He then proceeded to detail the circumstances under which the charge was made, according to the evidence. It was not during a period when his wife was pregnant—it was not after a period of absence, when passion in an impure minded man might perchance have got the better of principle, that this connexion was alleged to have taken place. The time

of the alleged criminal intercourse was not laid at any such period as this. Could any man on that jury believe a crime of this fearful nature could have been committed at a time when his wife had just presented him with a new pledge of their mutual affection, and at an hour when both parties had just risen from the sacred altar of family devotion, where they had asked their Heavenly Father to "lead them not into temptation and deliver them from evil?" They could not. Was the man worthy of the name of manhood capable of such acts. Surely not—at least we hope for the honor of humanity the jury would not believe so. Was it probable that the prosecutrix's story was true, judging from the circumstances as she had stated them. The girl was in her bed and the Dutchman in his bed near by—under those circumstances would not his own intelligence have indicated to a man of sense the danger attending the perpetration of such a crime? There was another circumstance which it was important to consider. It was alleged that this man had committed this enormous crime in the same bed where his own little daughter was sleeping. In the presence of and on the bed where slumbered his own innocent child, a minister of the church and a father, had committed fornication with a member of his own flock. Could the jury believe such a statement to be true? Could any man have been so great a beast as to have done this?

He alluded to the fact which had been alleged, that in less than ten minutes this crime was committed, and then the preacher coolly sets himself to philosophize upon the story of David. Was not this so utterly repugnant to all feeling that the jury could not believe it? They were not bound to believe all that that witness had spoken. There were improbabilities in the case which no jury would be called upon to believe. If one should come before them and swear that he had seen Dr. Herron playing cards upon the tombstone of his wife who had died the day before, would the jury believe that witness? Surely they would not. The character of the reverend gentleman was such that the statement that he had been seen gambling would be abhorrent to all probability and none would believe it; and in the testimony of this girl there were statements which appeared fully as improbable as this. Was it not fully as improbable that Mr. Marshall—a man who had sustained a character so remarkable for its purity and chastity should have come unto this girl's room at the time which had been stated and perpetrate this crime under the circumstances and in the manner which had been stated, and what else? Why rise from the act of pollution and philosophize about David, and ask her forgiveness which by the by it seems must have been granted without much difficulty, for he comes in the next week, and all this is acted over again. Is it a probable story that under circumstances like all these which have been detailed, this criminal intercourse should have been continued from July to January. No, gentlemen, this story is not entitled to credit at the hands of a jury.

It appears, gentlemen, that during the period of this alleged connexion there must have been one or two communion seasons, and that previous to one of these occasions the girl conscious of her culpability had refused to attend, and he had said she was no greater sinner than he was. Considering the c cumstances, gentlemen, must not that man be a p fect monster of wickedness who would go in church and administer the holy emblems of religi with polluted hands, and to the companion of pollution. He must be an infidel, an athiest who co do this thing. The defendant would not—he dar not have done it. He would have feared that would have been stricken down like Ananias a Sapphira, in the very act of his wickedness, a that the feet of the young men would have be waiting at the door ready to carry him out.

You, gentlemen, are not required to say this g is guilty of wilful and corrupt perjury—you c say that the act which she alleges is of such a cha acter that you cannot on such testimony consign t man to everlasting infamy and disgrace.

And besides these improbabilities to which he h alluded, the girl's testimony should have been co sistent from first to last; and the jury would jud for themselves whether it was so. After the time was known upon whom the girl was to charge t paternity of her child there had been a partial co cealment of her by her friends—the defence had h no opportunity of knowing what they had to co tend against. The counsel for the defence had n ver seen a copy of that information until they car into Court. But it had been said that truth w mighty and would prevail, and notwithstanding t efforts which had been made at concealment t truth would come out triumphantly at last; He ga a neat and brief sketch of the progress of truth a its tendency to triumph and prevail over decepti and falsehood, and in the present case, under the disadvantageous circumstances, he had no dou that truth and right would stand forth pre-eminent

He then reviewed the history which the elders the church had given in regard to the examination the prosecutrix at her uncle David Lyons' at the tim the church were taking into consideration the matt of re-calling Mr. Marshall, and the officious interf rence of her mother at the time of this examinatio The prosecutrix had alleged that she had had but o connexion with Mr. Marshall. Here is her delibera statement that she never had intercourse with the d fendant but once and then her admission, at the su gestion of her mother that it was twice, given upo the testimony of men whom all will believe, and no she comes into court and swears to this disgustin scene of debauchery which you have heard, exten ing over a period of some seven or eight month Which of her statements were the jury to take as th correct one? Would they believe either?

The testimony of the girl at the time of labor h did not concieve was to be considered of much weigh in corroboration of the statements. He then in brief manner reviewed the testimony of Mrs. Couc and Miss Lee, and then, after a recapitulation of wha he had gone over, went on to show that it was righ and proper for the defence to prove the connexio which Wilson had had with this girl. He alluded t the various circumstances which had been adduce in evidence—spoke of the anxiety of the girl to se Wilson when she had learned that he was lyin sick at Cannonsburg—all of which circumstances i was impossible to account for, except upon th supposition of familiarity between them. He allud

to the study scene, when Williams had gone unpectedly to the door of the study room and hears ness of strange and suspicious circumstances.—r was this the only instance of such occurrences, ich had been adduced in the course of the testiny. The Dutchman had seen them together d under circumstances which excited his suspins. He related at length the circumstances as deled in the Dutchman's testimony. It was, also, testimony, that Wilson had been teaching school that neighborhood, from the first of September the first of December of that year, and that he s frequently at Mr. Marshall's, under circumnces which gave an air of probability to the supsition that he was accustomed to have intercourse ith the girl.

He then took up the theme of the excellent and unpeachable good character, which Mr. Marshall had en able to prove. A better character than which he ould venture to say had never been proven before jury, in any case, and he enforced upon the jury at if ever a good character was of service to its sessor, it ought to avail him in a time of trial, e this. He spoke of the kind of evidence by hich the defendant had proved his character, hich was such as no other man could have brought. he eulogium on his character was given in the ongest and most confident terms, and he contend, that judging from this character, as proven by ergymen and others, whose own characters were eproachable, that it was impossible, in the very nare of things, that defendant could have committed s crime.

If, said he, I had believed this man guilty, I ould not have stood here as his advocate in this se. I utter but the sentiments of my heart, when say, that if I believed he had committed this crime, could not find words to express my detestation of s crime, nor terms to describe the foul thing. I ight say of him, as the prophet of Khorassan said himself, when he lifted from his countenance the il which covered his hideous deformity.

"Here—judge if Hell, with all its powers to damn,
Can add one curse to the foul thing I am!"—

o, gentlemen of the jury, if he were guilty of this rime, that man would not be fit for heaven above, nd he would be too vile to dwell in hell beneath; e would only be fit to be cast out upon the scorchd shores of the latter place where the vile worm that eeds upon corruption would turn loathing away om his polluted carcass!

Reported by J. Heron Foster.

PEECH OF WILSON M'CANDLESS, Esq. FOR THE PROSECUTION.

May it please your Honors:—It is certainly a very npleasant task, and one which no one could covet, hich I have to perform—one upon which I enter ith reluctance, but which I shall fearlessly discharge ithout regard to consequences. I never have, and never will hesitate, in the performance of a professional duty.

I was peculiarly unfortunate, gentlemen, in permitting you to retire last evening, under the eloquence f the learned counsel who last addressed you, whose lips seemed as if touched with a live coal from off the altar. It is my painful duty, gentlemen, to bring you back from the regions of fancy into which he spirited you to the sad realities of life. I would be glad, indeed, to go back to those realms of imagination, in which the gentleman wandered, and assist you in culling the flowers that bloom and blossom there. Who could resist that eloquence? I felt as if a magic wand had waved over us, and he has a heart of stone who could rest unmoved by that appeal. I repeat it, gentlemen, it is our exceedingly unpleasant duty, after being electrified by the thunder and lightning of yesterday, to come down to the disgusting details of this case. Our learned adversaries were beside themselves, "much learning hath made them mad."

Well might George Marshall, when on his knees last night, offer up a prayer to the Almighty Giver of all good for those gentlemen who led you off from the facts of this case to dwell upon other and more pleasant topics. I hope I was not myself forgotten in those prayers—I needed them more; my duty was of a much more unpleasant character, and required much more fortitude to perform. But if I had not his prayers I had those of the widow and of the fatherless, whom it is the proud privilege of my profession to plead for and protect!

What are our relative positions? I represent the helpless orphan and the widow—they a man heretofore elevated in society—a man surrounded by troops of friends—a man who has sustained a high character for piety and religion, backed by a powerful array of most influential men in this community. I see amongst them the venerable patriarch who in my infancy administered the element that introduced me into the visible church—I see there the man of God who presides over the country church where my forefathers' ashes mingle with their native dust—and I recognise in their midst the professor of that institution on the mount, from which streams issue to irrigate the parched moral wilderness of the Mississippi valley! But, however much pleased to see them, to greet them as friends and christian gentlemen, I doubt the propriety of their presence, and particularly their *prominency* on this trial—why look at them!—they appear more formidable than the Grand Sanhedrim of the Jews, or the Pope and his cardinals, with their mitres, rochets, and pontificals, in the Vatican at Rome! They have a *moral* influence more potent than all these, and when arrayed on ONE SIDE, have a tendency to kick the beam, and make the scales of Justice erroneously preponderate.

Who has not seen the influence of the country minister? He is considered as the friend of the family—in affliction he is called upon "to pour oil upon the troubled waters, and in prosperity their adviser and counsellor. Do you not feel this influence descending upon the mind like the gentle dews of heaven—imperceptibly, but known by its results—if you do not, I do. Beware of it then, gentlemen of the jury; divest yourselves of it, you have a high duty to perform, you are sworn to try this cause "according to the evidence, and as you shall answer to God at the great day." Let neither popular clamor, nor the presence of the clergy, screen this man from the punishment due to his crimes.

Look, gentlemen, at the attitude of the poor unfortunate orphan—the child, it may be the only one, of a widow, whose defence from oppression it is my pride and privilege to assert. I doubt not but that, on retiring last evening, you reflected upon the arguments of my learned friends, and your hearts were softened by their appeal—that you looked forward to the consequences to himself and his children of a verdict of guilty against this defendant. If you have gazed on that picture, cast your eye on this, and see the damning perjury with which you stamp the soul of my client by a direct verdict of not guilty.

In this case, gentlemen, our adversaries have argued upon the supposition that man is pure—that "original sin" has not been transmitted to this defendant—that there is no natural depravity in his heart If the devil have actually ceased his influence over us—if the Millenium has come, in which "the lion and the lamb can lie down together," and there is to be no more conflicts among men, where is the necessity of these venerable men, and their moral and religious teachings? Our adversaries appear to suppose the commission of this offence by a minister of the gospel impossible. Does he not pray daily to be delivered from evil, and for protection from the temptations of the devil? You have had cases cited of professors and ministers accused of this offence, and reference has been made to the case which occurred in an adjoining county where the defendant, although tried, was eventually proved to have been innocent. The counsel also referred to the case of Rev. Van Zandt, who was convicted by a jury of the country, but acquitted by an ecclesiastical assembly. I hold in my hand a most able argument in his favor, from the pen of Ex-Governor Seward, notwithstanding which I think there is some lingering guilt at the bottom of the transaction. The accused has never been and never will be acquitted by public opinion. But the counsel forgot to cite one most infamous case. Does he remember that in Beaver county? The case of a minister of the gospel, who *confessed* his guilt, abandoned his charge and left the country. I shall not name him—but he was a man of family, and seduced his wife's niece; does not this show that such an offence is not improbable on account of the character of the person accused—that such things may happen and have happened in a Christian community?

Is the church purer now than it was in the days of St. Paul? In his epistle to the Corinthians he says: "it is reported there is fornication among you, and "*such* fornication as is not so much as *named* among "the Gentiles," and again he says: "the works of the "flesh are manifest," which are "adultery, fornica-"tion, uncleanness, lasciviousness;"—is it not, then, possible that there is one renegade in the Christian Church? Here is a case in point—here we have an instance in an adjoining county of a man of family and minister of the Lord Jesus committing this description of crime, "which is not so much as named "among the Gentiles!" I argue that it is *not* impossible—is it improbable? That is the next question.

One *fact* is better than the finest theory, such as the counsel used. I would thank God were this untrue but here, is one who comes within Mr. Loomis' terrible denunciation; who he says is neither fit for heaven above, or hell below, but should be cast out on the lurid shores of the burning lake, where worm that never dies would disdain to touch polluted carcase—I would gladly cover this over the mantle of charity, for it grieves every man such things should be.

These were the impossibilities and the improba ities of the case. No improbability should weig feather against *positive* testimony; we cannot "ch on our imagination for our facts" and with a sole oath, too, staring us in the face.

They contend that it is impossible he should le the family altar, with the incense yet burning, rush to the embrace of a harlot, whose kiss is fi The case of David is a hackneyed one, but it is fou in the repository of religion, and is given for our struction. "He rose from his bed at eventide," may be from his very devotions, "and walks upon house top." He saw the beautiful wife of Uri the Hittite, his passions were inflamed, and he tempted of the devil. David committed his cri secretly, but Nathan said "I will expose it before Israel and before the Sun." David despatc Uriah to Joab, on a message of murder, that might be put in the van of the army and perish, he makes him drunk too, in the King's house, that might thereby be prevented from visiting his ov Yet they say that this great prophet was not subj to temptation,—was it not "possible" that the com ser of that sublime poetry might be guilty of suc crime? And is this defendant more lofty in his r gious feelings and sentiments than David, who su praises to the Lord "upon the harp, upon an inst ment of ten strings, and upon the lute?"

Yet David committed this great sin, confessed and mourned over it. He appears to have be aware of his great depravity in this particular, for one of his Psalms he says: "My wounds stink, a "are corrupt because of my foolishness; my loins "filled with a loathsome disease, and there is "soundness in my flesh."

He felt that the natural heart of man was depr ed, although our adversaries will not acknowledg —however pure and holy a man may be the de will still have some dominion over him. Is it po ble? or is it probable?

Gentlemen of the Jury, having argued sufficien upon these principal grounds of defence, I will n come to the positive testimony in this case, and y will bear in mind, gentlemen, that you are swor decide this case "according to the evidence"—y will bear in mind the solemn responsibility resti upon you, "as you shall answer to God at the gr day;" you will discard all personal consideratio The defendant occupies a lofty position—the pro cutor has been seduced from virtue, but you must n gentlemen, in cases where the weight of evidence on the side of the prosecution, "kick the beam" I cause a defendant has heretofore sustained a go character.

Who is the witness, upon whose testimony y ask you to convict this man? A female of heretofo irreproachable reputation, a communicant in t defendant's church, partaking of the elements of t holy sacrament from the hands of him who pollut her—an inmate of the family of her seducer. Pré ous to this occurrence no one doubted her charact —the very elders testified to its purity. The couns

e Napoleon, have placed men upon the chess-board t they might knock them down again; they ask you disbelieve—they wish you to discard her testimo- r although competent and credible; the offence mitted certainly degrades, but truth dwells there twithstanding. How was it in the days of our Sa- our, when the woman was brought to him in the mple, accused of adultery? He said "he that is ithout sin among you cast the first stone;" and one one her pharasaical accusers sneaked out, and to woman he said, "go and sin no more."

You are asked, gentlemen, to throw out the testi- ony in this case, and to dwell upon his good char- er, and the consequent impossibility that he should mmit this offence. There are certain tests by ich the credibility of a witness may be judged, not least among which is the deportment of the per- n when upon the stand. This is one reason that Bill of Rights guarantees to all the privilege of eeting their accuser face to face, in the presence a jury. Was hers, gentlemen, the face of a har- —of a bold fornicator? or was it the address and portment of an innocent female, who had imbib- the principles of truth from a religious mother, d in whose bosom they yet remained? They de- unce her as unchaste because she talked with Wil- n, with Williams and with Parkison. To illus- te this I must draw again largely on the Scrip- res upon the story of Ruth—Ruth, who went out the field with the young men, the reapers—

(Here the learned counsel was interrupted by e entrance of the Grand Jury; after they had retired continued—)

This girl is represented as unworthy of credit, be- use unchaste, and this is proved by her being seen ith Williams, Parkison, Wilson—even Johnson lled on her. If *this* is the standard by which the aracter of our daughters is to be ascertained, hose reputation is safe! Was Ruth unchaste? e came softly to the threshing floor, uncovered the et of Boaz and lay down beside him, at the end of e heap of corn. What did Boaz say, "all the city f my people say that thou art a virtuous woman." ere were circumstances of suspicion. In the field, ying on the floor with her future husband, and yet ill it be said that the Moabites were more virtuous an the christians of our day? And from this very oman descended David, for Boaz begat Obed, and begat Jesse, and Jesse begat David, and from the ins of David sprang the human body of the Saviour the world!

How unkind it is, if a lady happens to associate with ntlemen, and is afterwards seduced, for any one to y "you were seen in company with such and such rsons," and infer therefrom that she was previous- unchaste. Even if worthy of Mr. Marshall's care d protection, yet such a rumour must stamp her aracter with pollution! Will you—can you dis- gard her oath on such futile allegations!

They call her a liar, but where is the evidence? iss Lee swears that on *the day* Jane left the house ere was no angry words passed—but on the day fore, and what she did hear was with the door ajar, d she in an adjoining room. Such evidence can- t be relied on; family jars and quarrels are of every y occurrence; such things may be, but should be eeived with many grains of allowance; nor should the fact of her having quarrelled about a dress, and denied an alteration which she had made to conceal her condition, be considered sufficient to stamp her with wilful and corrupt perjury! Ah! if we could penetrate that heart and see the agony with which it was filled, could we not pardon her fault, and cover with the broad mantle of charity her departure in a single instance from the truth when her virtue was questioned! Could we not attribute her denial of pregnancy to some better motive than depravity of heart?

Then we have Mrs. Couch, and her *fowl* story; would we not all be in an unpleasant predicament if kitchen testimony and the petty quarrels of servants were to affect the morality and characters of us all? Such might be proper subjects for tea-table scandal, but they should not be introduced into a Court of justice. This trial has doubtless been talked over at every tea-table in that section of country, and this fowl story—what a luxury to revel over! Mrs. Couch would doubtless be at many of them, the fame of her revelations preceding her; "what is this you have heard of it?" says one; "a terrible affair," replies the old lady—"Jane actually cooked a chicken and then told the dutchman she didn't!" How such a thing would be talked over when that excellent beverage would be placed on the table? This trial would come in for a full share, and the fowl and the pie story would become celebrated over the whole country. These are trifling matters—ain't you ashamed Mr. Lowrie, at bringing them here, to impede the administration of justice!

We next come to her alleged contradiction in the statement she made to the elders. A young girl, who never saw as much of life before as she has since this occurrence, is faced by two venerable elders, men high in morality and in the church, and yet she tells a story. Can you realize, gentlemen, that even with a carnation hue suffusing her cheeks, she could come out and tell all about a continued connexion with her minister—is it sound judgement to suppose so? She says at first but "once," but is corrected and repeats after her mother that it was "twice." This is one of the strongest indicia of the truth of her story—the fewer times the less was the pollution, and the native modesty of woman led her to assert that the connexion had occurred but twice. But when brought before this court, under a solemn appeal to that Judge before whom we must all stand —bound to tell *all*, without concealment or reservation, she does so; the other was a very different position, and the disgrace and poignancy of her feelings prevented a disclosure of the whole truth.

Is such the contradiction which is to set aside a solemn oath? Ah, say they, she was kept out of the way of the Ecclesiastical court, and their committee! And why should she not be, when I am almost afraid to face them myself! Why such examinations? Is it not *here* that the trial of the accused, under the constitution, is to take place? The law recognises no ecclesiastical tribunal, and should there be one whilst this case is pending, they have no right to interfere with the administration of justice in the constitutional courts of the country. We deny the conclusion they draw from the fact of her retiracy, and assert that here and here only is the place, where, under the sanction of an oath,

the guilt or innocence of the accused is to be determined! Then, were these people imprudent—were these people wrong in preventing ecclesiastical committees from visiting her? When the counsel used the beautiful metaphor that "Truth, unclouded, springs spontaneous from the human breast," he doubtless meant truth not surrounded by the ordinary circumstances of life.

Consider the terrors of such a meeting—the loss of memory under it—and you will ask no better evidence of *truth* than such a "contradiction." Let me refer you to the instance mentioned by Mr. Biddle in the case of Dr. Braddee, taken from the Holy Scriptures, relative to the denial of our Lord by Peter. St. Matthew says, "before the cock *crows*, thou shalt deny me *thrice*," whilst in St. Mark it is "before the cock crow *twice*, thou shalt deny me *thrice*." Christians regard this as one of the strongest evidences of the authenticity of those holy writings; when the infidel and scoffer point to these, and term them contradictions, we reply they constitute the strongest evidence of truth, showing that the story is not a prepared one, agreeing as they do on material points, and disagreeing merely on immaterial ones. But suppose she *did* state a falsehood then—she *now* tells all, however disgusting.

My friend was very severe—unfortunately severe on the Justice who took the examination in this case. He is commissioned as a Justice of the Peace for that section of the county, and before he refused giving a copy of the examination the last time, had procured legal advice on the subject, from the correctness of which I differ. I was myself unable to get a copy, sent word that I must have it, and eventually obtained it, on the condition he mentioned—that "it should not be made public." At most his conduct arose from an error in judgement, and he may be right and the learned gentleman and myself wrong. The construction put upon the Bill of Rights is manifestly an erroneous one; if not, the defendant has also a right to enter the Grand Jury room and witness the proceedings connected with his accusation there. Yet every Juror is sworn to keep the secrets of his fellows. A man is not "accused," in contemplation of law, until a bill is found; then he has a right to meet his accusor face to face, and to have process to compel the attendance of witnesses. I am instructed to say that 'Squire McCully bears an unblemished character—he may be wrong in his decision in this case, but he is not worthy the denunciation heaped upon him by the learned counsel.

I have now fairly considered the contradictions, the improbabilities and the impossibilities of this case; now, gentlemen, we will come again to the positive testimony. The prosecutrix has made oath, in the presence of saints and sinners, and before her God, as to the fact of this connexion. Shall the positive testimony here adduced be set aside on the ground of an alleged "*improbability*," when consistent, uniform—not as to details, but as regards the principal subject of the offence,—for light or trivial causes. We may doubt the truth, we may also even doubt that we exist!

I coincide with the opinion of the court that the Legislature contemplated giving declarations *in extremis* in evidence. Let us then turn to the testimony of Dr. Curry; when warned by her medical attendant that she was in danger of approaching dissolution, and when he exhorted her to tell the truth and that she should not die with a lie on her li —does not the solemnity of the occasion add to th truth of her declarations? She has then the san motive for telling the truth that a dying person ha the admission of whose declarations in evidence a allowed by law. The gentleman says a "delirium might seize upon one at such a time—yet are not th dying declarations of one in the last agonies of deat when delirium clouds the judgment—received! H says, "oh, she didn't believe she was in the presen of God!" She must then have had a very bad mor instructor, if she did not know it, in that agonizin hour, when she was incurring the curse pronounc on Eve "that her sorrow and conception should b "multiplied, and in sorrow should she bring for "children." She was told that in a moment, in th twinkling of an eye she might stand in the presen of her God and Creator. She is asked, at that hou of mortal trial who is the father of her child?—sh answers "George Marshall!" The pains of labor a creeping rapidly upon her and again she is aske who is the father of her child—again she repli "*George Marshall.*" She is in the last agonies parturition and when warned that the thread whic connects soul and body may in a moment be seve ed, and a third time she returns the response—"Ge Marshall!" Can we set aside these solemn decla ations?

The gentlemen fear the empire of credulity wi again prevail if you convict this man; yet how a you to set aside this—a story confirmed upon all o casions—whenever called upon, whether legally o illegally, to testify in regard to it!

But I am detaining you too long, and shall soo close. One part, however, occurs to me as worth of serious consideration; I allude to this attempt to sa dle the paternity of this child upon an absent man. Wi son—once an inmate of the house of defendant; Wilso —now leveled by Mr. Lowrie from the student to th hostler; Wilson—who sat at the communion table wher defendant ministered in holy things—a man of un blemished reputation, against whom no lewdnes is alleged, except upon this occasion—this man now accused of being the real father of the child, i residing in a county of Pennsylvania, and is no brought here!

The defence ask us why *we* did not bring him how were we to anticipate their defence or to ascer tain that his attendance would be necessary? The feared "he would not testify"—in such case I would instantly wash my hands of this prosecution, aban don it, and turn my back upon my client. It is a part of the defence in this case to charge Wilson with the paternity of the child; had I been the defendan I would have ransacked this whole Union, searched every college and visited every district school, unti I had found him.

A defendant has the right to demand the atten dance upon his trial of every citizen of this common wealth, and in case of the refusal can procure pro cess to compel their attendance. Had they brought him, and he had refused to testify, there would have been an end of this prosecution; but when that man is not subpœnaed, is not even written to by them—, when he answers our letters by a positive denial of

e charge, what must we infer? If Wilson said he ould not tell, that would be enough—but there is ttbt a finger moved, no exertion. no subpœna, no discocess placed in the hands of the Sheriff, by which , a would be empowered to drag the recreant witness to these halls! The only inference to be drawn twom this is that Wilson is as pure as they represent uir. Marshall! Was it impracticable to have him mere? After getting an answer I would myself have ritad him here, had there then been time, but the deonce—the salvation of this defendant rested on it—e ve church, his family. the whole community called Yu him thus to purge himself of this accusation. An nbsent man should not be convicted without trial—erithout the privilege of having his witnesses heard; mrithout meeting his accuser face to face! This is iicle dark stain—the damninig evidence of the guilt of his defendant!

n Gentlemen. to prove the alleged intimacy between hem, and the unworthy character of the girl. they eevere driven to call Aggers, a witness who looked as a he had the "agers." for he shook so much when —ross examined. The counsel professes to be a judge pof physiognomy, and speaks of the honesty and the intellect of the witness as judged by his face. I difder with the learned gentleman. To look at him one uvould suppose that "one of Nature's journeymen nad made the man, and made him badly, he imitated tanmanity so abominably." He who would asperse rehe character of his employer, and who said years tlgo that this defendant wished to have improper fa(miliarity with his house-keeper—"an honest Dutche nan," truly—but the counsel must have used the words in the same spirit in which Marc Antony dethominated Brutus "an honorable man!" "An honest Dutchman," truly—who is contradicted by his itown story; he said he saw Wilson coming down one lbair of stairs and Jane another, but when cross-exnamined does he say he saw him on the stairs? No—he hwas coming out of the entry, not on the stairs; but he hcomes to the wise conclusion that he must inevitably ehave come down one pair of stairs, if Jane came edown the other. He then goes up and sees the bed of—he then reflects that the girl's clothes were rumpded, but it never occurs to him that she might have ylain down that Sunday, to take a nap—a custom to iwhich, whether approved by the clergy or not, I frequently feel much inclined to do myself.

rt Might not this have occasioned the "skrinkling" to e which he refers? He testifies that there were two iimpressions on the bed, as if two persons had lain f there—now had there been any improper conduct it His probable there would have been but *one* impresesion; to give force to his testimony he swears to two, because two persons came down stairs. How did he eknow this? "Because," says he, "he saw them up stairs together,"—through the window, and a reverend gentleman is brought to testify that he could see persons smoking *at* the window, from the stable; who ever doubted *that?* Aggers says he saw one sitting at the window and the other passing—a mere refuge to get out of the difficulty.

n At another time we find this man Aggers awake at three or four in the morning—probably from na *uneasy conscience;* he looks from his window, sees a man on the porch, watches him, sees him go into the room, and yet don't know who he is! If this was Wilson is it probable no salutation would pass between them—is it likely there would be no recognition? Yet the inference is that he was up, committing fornication. There are reasons—peculiar causes, which might have induced this man to be up at that hour, but I presume it is not necessary I should refer to them. Is the violent presumption they ask, to be taken from so simple an occurrence?

Ah! but here's Parkison! Mr. Parkison says she was "anxious" about Wilson's situation. How proper it is that a witness should confine himself to facts, and leave the jury to put their own constructions upon them; if not we may dispense with juries and leave the witness to decide the question; "she was anxious"—why? because "she asked how Wilson was, and what the state of his health." This trifling circumstance has been magnified from a molehill to a mountain, since this affair has come to light; and now this anxiety is said to occur "because Wilson was the father of the child!" she asks "is he likely to get well?" she must have had a heart of stone not to have made the enquiry, yet the imagination of Parkison conjures up this "anxiety;" we want *facts*—we want to ascertain what occurred at the time. Well, but Mr. Parkison appears to have been very "anxious" himself; he called to see this young lady, to question her relative to her pregnancy, and is very properly refused the gratification. I asked him if it was customary for students to question girls upon such delicate matters—if such is the code of morals taught at Canonsburgh? I see around me many gentlemen who are trustees of that institution—my learned and distinguished friend Judge Grier is also one of the board—I ask them if such things are taught in that seminary of learning?

Parkison says he called to ask particularly, relative to this connexion—I was going to say to "pump" the prosecutrix—to glean all he could from her, to manufacture "contradictions" of her statements, then give them in evidence in a court of justice.

Mr. Parkison was certainly a very modest young man, just leaving college—to call upon a girl who he knew was pregnant; he was exceeding anxious for Mr. Marshall and his fate, and gives us impressions not warranted by the facts of the case. "How is Mr. Wilson—is he likely to get well?" is made the key to the whole affair. Out upon such gallantry and modern chivalry.

Another young student, Mr. Williams, tells us another story—a most marvellous story—a story intended by mere implication to convict an absent man. These little occurrences are always magnified—one tells it to his friend, who passes it to another, not in the least decreased, it swells larger ere it reaches a third, increasing as regularly as the snow ball which the school boys roll until its bulk defies their united efforts! Were it not for our laws relative to slander, a man's character would stand no chance whatever. This witness, when at college, has probably read much poetry. and his imagination has been greatly expanded, if not his heart. He states that he knocked at the door of the study, got no answer; he knocked a second time, heard strange voices, and then the sudden slamming too of the back door, "a shut sesame," that closed from his eyes the secrets of the robber's cave. All these are trans-

lated into the pollution of a female on the minister's bed, and some three months after we have the slamming of the door yet ringing in the witness' ears! Although these were not evidence, Mr. Lowrie introduced them as conclusive of the guilt of Wilson. but he is famous for making the worse appear the better reason, and I do not complain.

If these are the foundation for attacks on the purity and chastity of character, no one can be safe, and you and I hold our reputation by a precarious tenure.

Gentlemen, I have nearly concluded—you are doubtless exhausted by the long continuance of this case—I assure you I am. Is not this defendant guilty? His counsel refer you to the improbability of his guilt, but we have shown you that similar instances have occurred before; they have referred you to one or two trifling contradictions in her statement, but we contend that they but strengthen our case, and add to the credibility of the witness. We have directed your attention to her declarations made under oath, and when in the extremity of her labor; we ask them why Wilson is not produced? Again, they say it is improbable the offence should be committed in so short a time; who has more control over mankind than the minister, and above all the pastor of a country congregation, in whom is more confidence reposed? have we no instances of the abuse of this confidence in other churches? if a minister abuses his power, influence and authority, and his holy office, should we therefore declare this girl perjured. Wilson is in their power, he could have been brought here, but there was no effort whatever to procure him!

The character of the defendant pleads eloquently for him; a city set upon a hill, he could not be hid; his light was not under a bushel, but upon a candlestick. But did not Adam fall, who was created perfect? Did not David sin, who was a peculiar favorite of the Almighty? and may not poor weak man, at this present day, fall from his high estate owing to the natural depravity of his heart, and the temptations of the devil? It *has* been so, and one ounce of fact is better than ten pounds of theory and presumption.

I admit, Gentlemen, that Religion—public morals—receive a vital stab in the conviction of this defendant—I lament it—but the church should be purged and unworthy men no longer allowed to administer with unclean hands the ordinances of our holy religion.

I have examined this case in all fairness, and I am convinced she has told the truth—I rest with confidence upon her statements,—and, gentlemen, when thinking of the minister, his wife, and his children, I implore you not to forget the widow and the widow's child!

Her character has stood fair in the community where she lived, pure and unblemished even in the sanctuary. Bear in mind "the widow of Nain," whom our Lord took compassion on, and raised her son from the dead. If this unfortunate daughter of the widow has been struck down by the pollution of her seducer, add not to it the damnation of hell, for the crime of perjury, but cherish in your hearts the fond recollection, that, unawed by influence here or elsewhere, you touched the dead corpse of injured virtue and innocence, and it sprang to its feet!

Reported by J. Heron Foster.

CHARGE OF THE COURT.

DELIVERED BY HON. BENJ. PATTON, Jr.

After the counsel for the prosecution had concl ded, the charge of the court was delivered by Jud Patton, as follows:

Gentlemen, the defendant in this case is indict for fornication and bastardy; the allegation is that committed fornication with the prosecutrix, and her body begot a child, in the fore part of Decemb 1842. The indictment is framed under the Act Assembly of 1705, the second section of which is follows:

Sect. II.—If any person or persons shall commit f nication, and be thereof legally convicted, such person persons shall receive twenty-one lashes on his or h bare back, well laid on, at the common whipping-post, otherwise shall forfeit and pay to the proprietary a governor, for the support of the government of this p vince, and defraying the contingent charges thereof, t sum of ten pounds, at the election of such person so c victed as aforesaid.

Another section reads:

Sect. III.—Any single or unmarried woman havin child born of her body, the same shall be sufficient pr to convict such single or unmarried woman of forni tion; and the man by such woman charged to be the fa er of such child, shall be the reputed father; and she p sisting in the said charge in the time of her extremity labor, or afterwards in open court, upon the trial of su person so charged, the same shall be given in eviden in order to convict such person of fornication.

The section which prescribes the punishment f this offence is as follows:

Sect. VIII.—Every person being legally convict to the reputed father of a bastard child, shall give secur to the court, town or place, where such child was bo to perform such order for the maintenance of such chi as the justices of the peace, in their sessions, shall dir and appoint.

The law is that the person convicted shall give curity for the performance of his sentence, which usually a certain sum for lying in expenses, and up the time of trial, and a weekly stipend for the supp of the child for a certain length of time thereafter.

In many countries fornication is no offen against the laws, and there are institutions establis ed for the support of the offspring of such as co mit it: there is no restraint upon this species of i dulgence—upon a passion so much demanding and the consequence is evident,—a large portion the population are illegitimate; it has been ascerta ed that from one-eighth to one-fourth of the populati of the chief cities of Europe are bastards, while t statistics of the Neapoliton cities give the proporti as from one-eighth to one-third! I congratulate yo gentlemen, that such a state of things does not ex here. The founders of our commonwealth wise considered that all laws were nugatory which we not sustained by sound principles. The laws pa ed under the administration of the original prop etor and his brother adorn our statute book; it is refreshing to look upon them and witness the e dent anxiety exhibited for the protection of the m als of the people; the preamble to the act of 1705, n der which this prosecution is instituted, sets forth, its object "the preservation of virtue, chastity a purity amongst the inhabitants of this province."

Long may the spirit which dictated it continue to animate our law givers!

Whatever diversity of opinion may exist in other respects, it is clear that acts of this description are productive of beneficial effects, by interfering for the protection of the female against the stronger sex, and imposing penalties upon the men—there can be no doubt of the wholesome effect of such enactments. But we must take care to allow no perversion of them to ends of injustice, we are bound to see the law fairly and impartially executed.

Under these laws extraordinary and dangerous powers are confered upon one of the offenders, the female, but this is necessary; the offence is committed in secret—the parties only are present. The female is convicted by the birth of the child, and the law makes her a competent witness against the man; the man has the advantage, and the female is *ex necessitate* used as evidence to convict. In consequence of this in the execution of the law gross injustice no doubt does occasionally occur, and the jury should visit with a searching scrutiny the evidence adduced, especially where the accused is a man of a spotless reputation.

In ordinary criminal cases the testimony of a prosecutor should be received with caution, as in many cases the prosecutor's motive is revenge—not public justice, but malicious prosecution. How much greater necessity, then, exists for a similar scrutiny where the success of the prosecution rewards her by a pecuniary compensation? In civil cases no one is allowed to swear money into his own pocket—the smallest pecuniary interest disqualifies. The rule of the law of 1705 is founded upon very good reasons, yet ought not such evidence, where its introduction is necessary, be admitted with care, especially when it is intended to convict a man of virtue, piety and chastity.

There are other things which were introduced in the arguments of counsel, but which are of minor importance.

As regards the conviction of this defendant, and as resting upon the evidence of the prosecutrix, you will examine its probability and consistency with truth. The act merely makes her oath *evidence*—not by any means *conclusive* of his guilt; the jury should weigh it well—they are not bound to believe a witness under such circumstances—they must regard the whole case.

On the part of the defence the improbability of the leading features of her statement is urged. The charge made is as follows: That "between nine and ten o'clock, one night in July, 1842, defendant first appeared at her bedside, and stated his desire: she requested it might not be so, but he insisted; he then accomplished his purpose; he said he thought it was a great sin, after it was over, and wished that she would forgive him for it; he said David had sinned the same way too; the whole transaction occupied but ten minutes, and that the intercourse continued afterwards, once or twice a week, up till the month of February, 1843. when it stopped on her discovering her pregnancy." Such is the prosecutrix's statement.

The time, it must be admitted, was rather unusual, and it would seem as if the witness had readily and hastily sacrificed her virtue. If it was never intimated by the offender that he desired such a thing—by look, word or act, one would suppose that the surprise into which such a proposition from such a source would throw a virtuous female, would be so great that she could scarcely recover, much less entertain the proposition and yield, in so short a time as ten minutes. Had it been some favored suitor. professing his affection and promising a speedy marriage, it would have been less surprising, but it was a married man—one who has a family—her minister and religious instructor—one from whom a breath of love or of lust had not been heard—who had just arisen from engaging in prayer with her at the family altar—who had a wife under the same roof, who had but recently given him a renewed pledge of affection—his little daughter in the same bed with her!—if true, it presents a picture of livid and black hypocrisy and guilt—an outrage upon all the relations of pastor, husband and father, at which every feeling of our nature instinctively revolts!

You should require the most satisfactory proof, to convict any one of such infamous conduct—the improbability of which is increased by the previous character of the accused. The defence also contended that the beds in the room were occupied during a portion of the time alluded to, by other girls. Whatever view you may take of this subject, we trust you will sustain such an accusation only upon the most clear and unimpeachable evidence.

You alone have the determination of this question, and if you should not consider the story improbable you should see how far it is corroborated by other testimony. You have in evidence her declaration in the extremity of her labor, which was objected to on grounds which were not without force; the act. however, in the opinion of the Court, makes this evidence in all cases. In whatever light you view it, and the Court would not intrude upon your province, we certainly cannot conceive that it adds any weight to her testimony in Court.

The laws provide for the punishment of perjury; the departure from truth of a witness, when on oath, is therefore doubly punishable,—by the law here and by Heaven hereafter; a witness is therefore under a double obligation to tell the truth; and we confess we cannot see how it can be much increased. You should reflect, also, how seldom an assertion of this kind, when once made, is afterwards departed from—the only one we have known was cited by the counsel, where a woman retracted her statement twenty years after the conviction of the man she accused. We do know, however, of innocent men having been convicted of this offence, which should be a warning hereafter, and a caution to juries to use the utmost circumspection in such cases.

It is also urged by the defence that there are palpable contradictions and untruths in the statement of prosecutrix—they contend that she was charged in July with pregnancy, by both the defendant and his wife; that she should deny that such was her condition is very probable, but that she should deny it to the man whom a month after she charged with being the father of the child, is, to say the least, very remarkable.

She denied also that she was discharged by Mrs.

Marshall—Miss Lee swears that she was, and that she told Mrs. Marshall, upon that occasion, that she should "rue" that she had ever spoken against her reputation. She gave a different version, to the committee, of this transaction; first she mentions but one such occurrence, when she is corrected by her mother, adopts her correction, and says "twice," she then comes into court and swears that it occurred weekly and semi-weekly from July to February. These are certainly contradictions, and it is for the jury to say how far they should go towards impeaching the credibility of this witness.

The charge is one easily made and hard—very hard to disprove,—the female is the only competent witness of the two who are present upon such occasions, and one of the legal means of defence of which the accused can avail himself is the proof of a previous connection between a third person and the prosecutrix, or circumstances from which such an inference may be legitimately drawn. In such a case the third person is not a party to the suit—he is not convicted—he is not on trial—the jury do not pass upon his guilt. The result of such evidence can only be to create doubts on the mind of the jury, authorizing the acquittal of the defendant.

In this case the defence have certainly established a close intimacy between the prosecutrix and Wilson. This man was originally a hired man in the house; he then went to college, and was afterwards at the house some six weeks in June; and in the fall, when teaching in the neighborhood, frequently visited Mr. Marshall's. If you believe Aggers, he was seen in the study with her under very suspicious circumstances—the bed had been lain upon, and her clothes were rumpled. He also testifies to the suspicious circumstance of a man being seen in the kitchen at an unusual hour; he could not name him, and his showing no forwardness to do so, is good evidence of his credibility.

The credibility of this witness has been a subject of discussion: he is a German, and intimated a desire to be examined in his native language; it is for you to say, gentlemen, whether his manner or appearance betrayed guilt; the confusion of a witness, under a rigid cross-examination, is no evidence of a disposition to vary from the truth.

On several occasions the prosecutrix evinced an *unusual* anxiety as to the health of Wilson; to Miss Morgan she states that she must see Wilson before his death; and requested her to accompany her. In June she is seen with him, after the usual hour of worship, the one affirming earnestly and the other, with equal earnestness, denying something which formed the subject of their conversation. If it is correct that her pregnancy could be seen at that time, Wilson could certainly have seen it, and unless there was some peculiar reason for it, would he go to church, or be seen in earnest conversation with a girl in her situation?

At one time, when a friend called on Wilson in the study, he received no answer, but heard a noise as of chairs—he knocked a second time, Wilson said "come in," and as he entered the witness heard the opposite door pulled too in a sudden and hasty manner. Evidence of Wilson's declaration on this occasion was clearly inadmissible; you may determine from the circumstances the weight of this evidence in the case. It seems that she kept secret the f her pregnancy until the last period, there wa charge made until after Wilson left; on the e her confinement she makes the assertion that shall is the father of the child.

Now, gentlemen, this a legal ground of defe and one of the few; you are not called upon to upon Wilson's guilt or innocence—but this mu affect defendant's case. You are not called up say Wilson is guilty, but you may say whether d exist in your minds, such as would make convi a hazardous result.

Wilson is absent, and each say the other s have procured his attendance. This was n duty of either party, and there is no inferen be drawn in favor of either of them from hi sence. It was the right of the defence to tal ground they did—whether Wilson was prese absent. If here, he would prove a most unsa tory witness to both parties, and none are bou testify to criminate themselves.

There have been complaints against the mag for withholding a copy of the information fro fendant, and it seems he was not permitted t the charge against him—kept completely in th until the meeting of the court; although he cal peatedly, he could not obtain a copy except o dition it should not be made public. We w say the 'Squire was dishonest—no doubt he from perfectly correct motives—but it was wit proper knowledge of the defendant's rights. certainly a very hard case that he should thus prived of a knowledge of the charge against hi

The information, as well as the indictment, a the begetting of the child in the first part of Dece which she says she ascertained after the bir counting backwards." The Commonwealt tended, in support of their witness, that she ha tofore borne a good character—such is the evi but charity is the foundation of all the other vir its loss involves a wreck of the whole. Go brothel of any of our sea-coast cities and liste accounts given by the inmates of their birth, edu and virtue—till the evil hour of their seductio then see the consequences of their departur chastity! We do not suggest this to induce say that you absolutely disbelieve the story prosecutrix—you have no evidence as to her perjured or not—but you may look at the wh idence and judge carefully—then you can say er in the circumstances of the case, her con tions, and the improbabilities of her story, not find reason to doubt; you may say: "W heard the testimony produced by the prosecu it has made a strong impression upon our other circumstances have produced strong do you wish him dragged down from the posit occupies, your story must at least be free fro tradictions; we are not prepared to say you a ty of wilful perjury—we should be sorry to c that absolute conclusion—we only say your a must satisfy us beyond a doubt. We hav oath on one side, on the other his denial and t dence of his good character heretofore."

We repeat it—there is no issue of perjury case, nor is Wilson on trial before you; you to say whether he is guilty or innocent. Th

for your consideration is whether the testimony strong as not to render a conviction hazardous. I have seldom seen one so pure proven in a it—we do not regard him as a minister, but he is ited to a lofty position by his virtues, and by a of purity and chastity up to this time.

e have before us this charge, sustained by her , rendered competent by law, and his denial, ained by evidence of an excellent character; to ive him of the station he has heretofore occu- you should demand the most clear and satisfac- evidence. If guilty, it seems to us he would it cowered under it—but his conduct gave no nce of guilt, he went before the magistrate to ont the witness, with indignation that a charge ch infamous conduct should be preferred against he demands a copy of it—it is denied him; he s the charge here with boldness. If guilty he ter for the penitentiary than for the infliction fine in the shape of a weekly allowance for the tenance of the child!

his case has excited an extreme degree of inter- nd the presence of the clergy, of the same and s churches than defendant's, has been alluded to course of the trial; they doubtless came from est motives, they were entitled to enter the room and to hear the testimony; whatever the dant's fate in this proceeding, he will undergo er trial before the church to which he is at- d.

his case the prosecutrix is not a party; the pro- on is in the name of "THE COMMONWEALTH *vs.* MARSHALL,"—and, however the result may the interests of the prosecutrix, the common- h is the party, and demands no conviction but ar and satisfactory evidence, leaving no rea- le doubt upon the mind of the jury.

ere are many features in the case upon which ve not dwelt—they have been ably comment- on by the counsel in the case. We close our ks, gentlemen, by stating that you alone are dges of the evidence in this case, and should view of it differ from that of the Court, we heerfully acquiesce in your decision.

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had intended originally to have inserted in ortion of the work a number of interesting let- rom Mr. WILSON, who is so frequently referred this case, with statements, letters, and affidavits e to his assertions, &c. These, although not evidence, would have been read with interest by o are desirous of reaching the truth of this mat- t on account of the trial not being decided, we reluctantly concluded to withhold them until ne new trial has been had.

ADDENDA.

The following letter was received by Mr. MARSHALL during the trial of the cause:

Sir I talk a singlieur method of communicating with you. we understand that the refusel of a certain oath by a certain Justus is constriend into a conspiricy and as we. know the conciquence I wish to inform you that if you prosead any ferther your hous and improvement will be left a smoking rieuns an as your congregation is making it thair bisnis per haps, church property might be left in sMoking Desolation also some will say our remidie is sever so is the case we have in han this epistel comes from a sours that you know not nor ever will: know yet it is authentic some you will suspect but blame no person for you will bee wrong.

an other thing if you se fit to proced do it at your pierl and if you do not all will be well and if you ever mention the contents of this letter your your life will be the forfitieur

Some will say this is a hoax it is not proced against the Justus and you will discover the of auful truth we call not on god nor swear any oaths to afirm what we say. for your own sake mention not the contenc of this letter yours —— ——

The following is the correspondence relative to the information mentioned in Esq. McCully's testimony:

BETHEL, Sept. 16th, 1843.

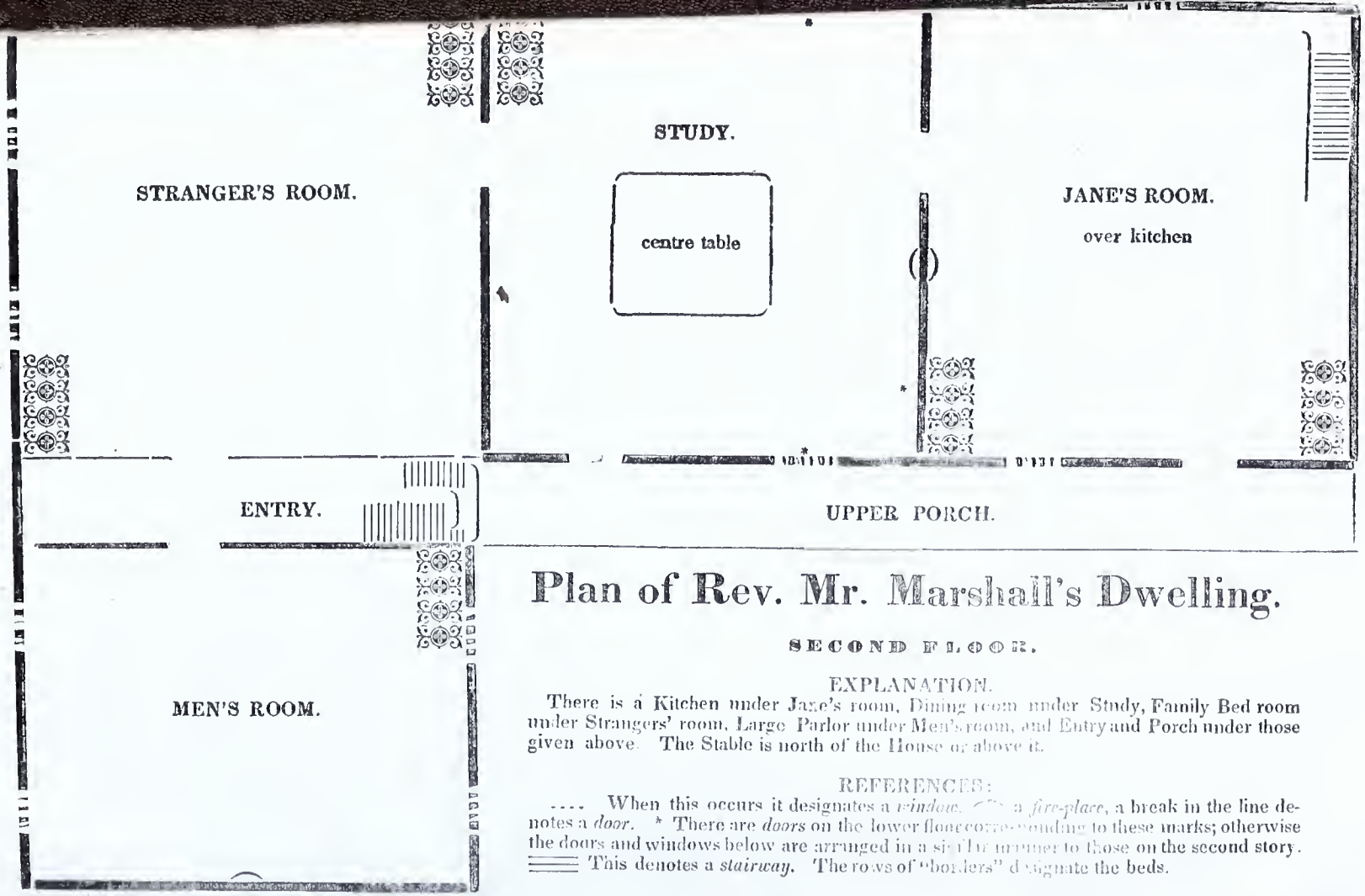
To Mr. John McCully, Esq.—DEAR SIR:—By this communication I ask of you the favor of sending me a copy of the oath of Eleanor Jane McFadden, together with the questions asked by you and the answers given. To have this, I think, is my right and privilege, as one accused before the public of an awful crime, so that I may know exactly how I stand accused, and what, as defendant, I have to meet. I trust this will appear reasonable to you, and those learned in the Law say it is my right to have this. Please to send it by bearer, and any charge for trouble in so doing will cheerfully be paid.

I remain with sincere regard, yours, &c.,
GEORGE MARSHALL.

ST. CLAIR TOWNSHIP, Sept. 28th, 1843.

Rev. George Marshall.—DEAR SIR:—Yours of 15th inst. is received, in answer to which I inform you that I will comply with your request, on the following condition: that you pledge your word that you keep the deposition of Miss McFadden from the public until the Court is in session. I have not yet told the deposition to any; my reason for keeping it a secret is that the mind of the public may be unprejudiced, and so you and her may have a fair trial.

Most respectfully, I remain, dear sir,
YOURS, &c., JOHN MCCULLY.



Plan of Rev. Mr. Marshall's Dwelling.

SECOND FLOOR.

EXPLANATION.

There is a Kitchen under Jane's room, Dining room under Study, Family Bed room under Strangers' room, Large Parlor under Men's room, and Entry and Porch under those given above. The Stable is north of the House or above it.

REFERENCES:

.... When this occurs it designates a *window*. ⌒ a *fire-place*, a break in the line denotes a *door*. * There are *doors* on the lower floor corresponding to these marks; otherwise the doors and windows below are arranged in a similar manner to those on the second story. ═══ This denotes a *stairway*. The rows of "borders" designate the beds.